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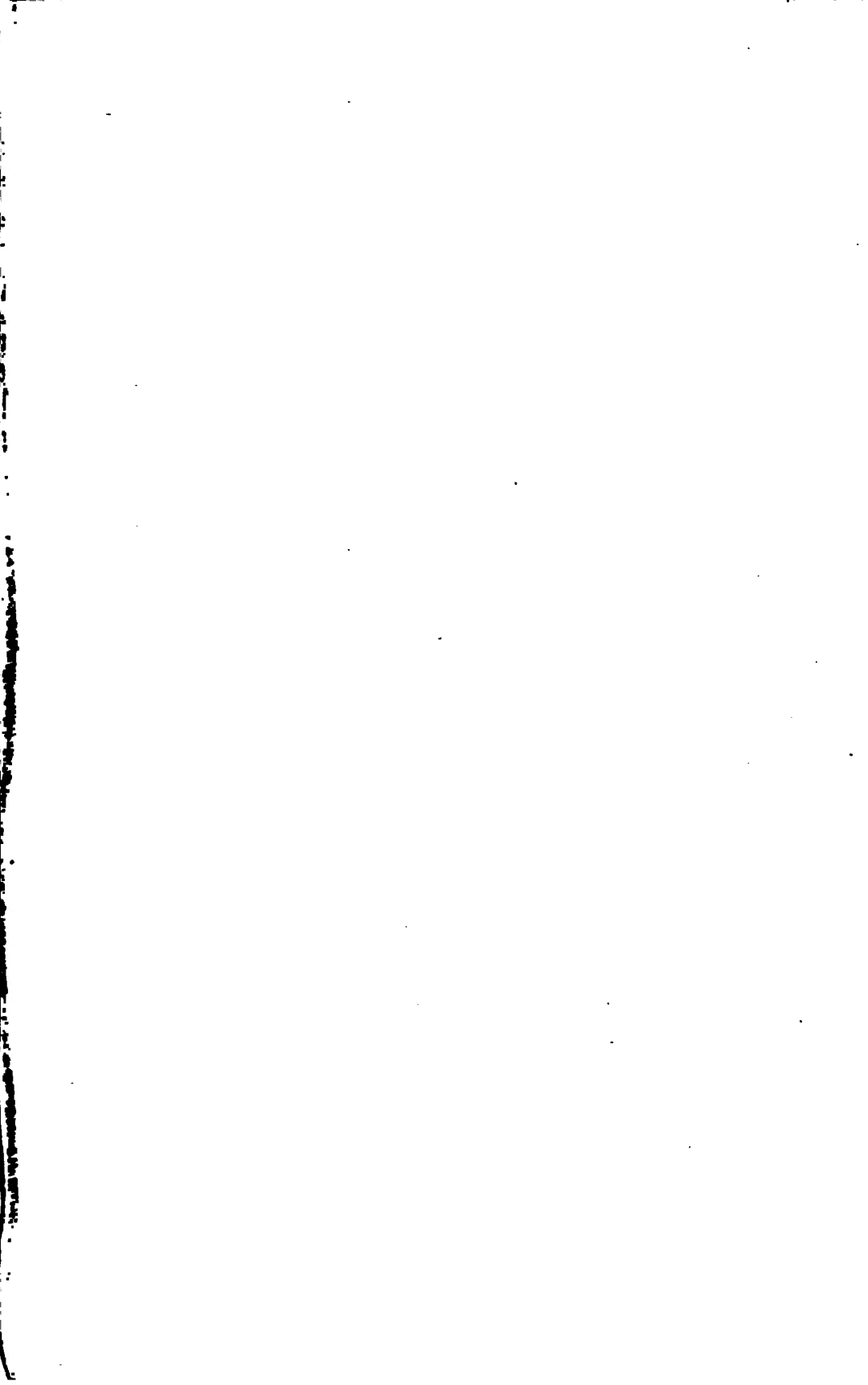
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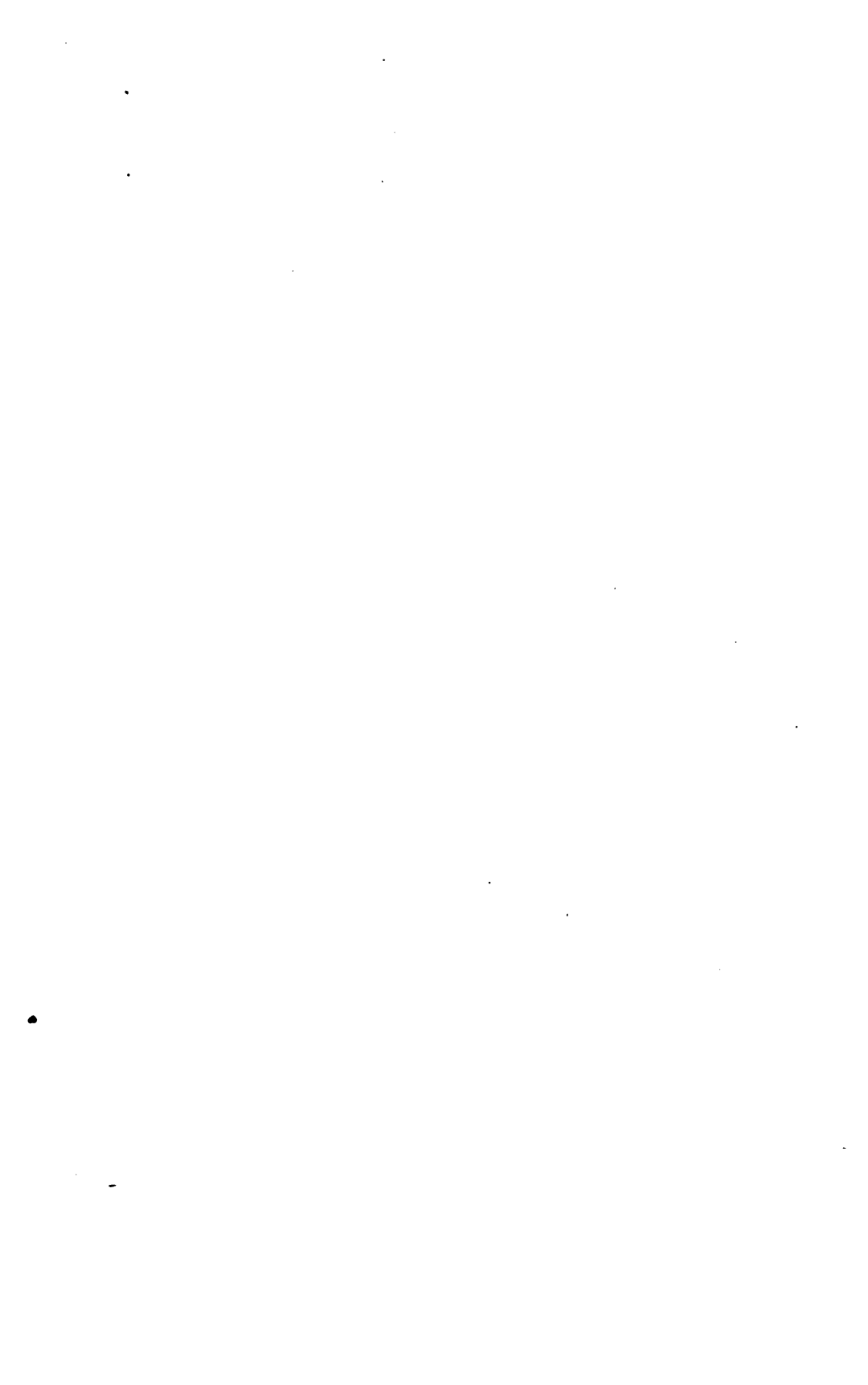
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STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

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Volume XVII]

[Number

CENTRALIZING TENDENCIES

IN THE

ADMINISTRATION OF INDIANA

BY

WILLIAM A. RAWLES, Ph.D.,
Assistant Professor of Economics, Indiana University



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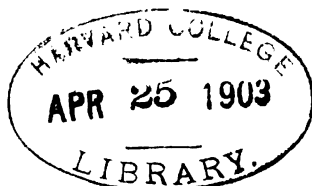
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CHAPTER I

INTRODUCTION

By administration is meant that department of government which is concerned with the detailed execution of the will of the state as it is manifested in the laws. It is to be distinguished from the legislative department, which expresses the will of the state. It is also distinct from the judicial authority, which applies the law to specific cases as they arise, and from the executive *par excellence*, which is responsible for the general supervision of the execution of the state will.¹

Students of political science have observed in the United States a strong tendency towards centralization in the Federal² and municipal³ administrations. In state administration, likewise, a similar movement has recently been described.⁴ The preparation of this paper was undertaken

¹ Goodnow, Frank J., *Politics and Administration*, p. 17. "The authorities which are attending to the scientific, technical, and, so to speak, commercial activities of the government.....are.....known as administrative authorities." *Ibid.*

² Goodnow, F. J., *Administrative Law*, i, pp. 62-74, and *Politics and Administration*, p. 118; Bryce, James, *The American Commonwealth*, i, ch. ix.

³ Goodnow, F. J., *Administrative Law*, i, pp. 207-213, and *Municipal Problems*, ch. x; Bryce, James, *The American Commonwealth*, ch. lii; Wilcox, D. F., *The Study of City Government*, pp. 189, 191-202; Fairlie, John A., *Municipal Administration*, pp. 96-8.

⁴ Webster, W. C., *Recent Centralising Tendencies in State Educational Administration*, Col. Univ. Studies, viii, no. 2; Whitten, R. H., *Public Administration in Massachusetts*. *Ibid.*, viii, no. 4; Fairlie, J. A., *The Centralisation of Administration in New York State*. *Ibid.*, ix, no. 3; Sites, C. M. L., *Centralised Administration of Liquor Laws in the American Commonwealths*. *Ibid.*, x, no. 5.

with a view of ascertaining to what extent this centralization has progressed in Indiana; and what effects, if any, it has produced upon the efficiency and economy of the administration.

In order to give the proper setting it is deemed advisable to preface the discussion by a brief historical outline of the government of Indiana prior to its admission as a State.

Under French dominion there was in what is now Indiana, scarcely anything that could be called local civil government. For administrative purposes Indiana was divided somewhat indefinitely between the provinces of Louisiana and Canada. Vincennes was in the Illinois district of Louisiana, and was governed from New Orleans through Fort Chartres, Illinois.¹ Each district in this part of New France had its own commandant, who exercised authority as superintendent of police and justice of the peace.² The people had no conception of local self-government, nor even of trial by jury. They trusted every thing to the character and authority of those appointed over them.³ They were careless, easy-going and contented; honest in their business transactions; and simple in their manner of living.⁴ The multitude of functions exercised by the modern state and municipal governments was unknown to them. Hence, there was little occasion for the formal enforcement of law and no necessity for an elaborate system of civil administration.

Even after this territory had been transferred to Great Britain in 1763, there was no introduction of civil govern-

¹ Dunn, J. P., *Indiana*, p. 58.

² Law, *Colonial History of Vincennes*, p. 10; Breese, *Early History of Illinois*, p. 216.

³ Walker, C. I., *The Northwest during the Revolution*, in *Michigan Pioneer Collections*, vol. iii, p. 14.

⁴ Dunn, *op. cit.*, pp. 94-7; Law, p. 16; Breese, pp. 220-2.

ment until 1774. Military officers appointed magistrates and defined their authority, which was enforced by the soldiers.¹ The well-known Act of 1774, extending the limits of the Province of Quebec to the Ohio and Mississippi Rivers, vested the legislative authority in the Governor and Council of Quebec, both appointed by the king. The criminal procedure of England and the civil procedure of France were established.² But this was little more than a paper system. Indeed, it was not until 1777³ that English authority was exercised over the French inhabitants at Vincennes.⁴ Though a civil government had a nominal existence at this time, justice was still dealt out in much the same way as under the preceding military régime.⁵

On July 4, 1778, Colonel George Rogers Clark under a commission from Virginia captured Kaskaskia.⁶ Almost as soon as the news of this event was received in Virginia, the Legislature of that State passed a temporary act establishing the County of Illinois,⁷ including all the territory northwest of the Ohio River. The government provided by this law was highly centralized. The Governor of Virginia was empowered to appoint a county-lieutenant or commandant-in-chief of the county to hold during pleasure. He in turn had authority to designate as many deputy-commandants, militia officers and commissaries as he should think proper. The religious, civil and property rights of the inhabitants were guaranteed. All civil officers to whom the inhabitants had been accustomed for the preservation of peace and the administration of justice, were to be chosen by the citizens,

¹ Walker, *op. cit.*, p. 15.

² *Wisconsin Historical Collection*, xi, pp. 53-60.

³ May 19. ⁴ Dunn, *op. cit.*, p. 81.

⁵ Walker, *op. cit.*, p. 17.

⁶ Dillon, J. B., *History of Indiana*, p. 124.

⁷ Hening's *Statutes*, ix, pp. 552-5.

convened by the county-lieutenant for that purpose. They were to enforce such laws as the settlers had been accustomed to. The county-lieutenant had the power to grant pardons except in the case of murder and treason, and in such cases he could allow respites pending an appeal to the State. Under this authority civil government was actually inaugurated in May, 1779, and later the first election was held. Although the statute which vested the officers with powers expired in 1781, they held over until the arrival in 1787 of Colonel Harmar, representing the authority of the United States.¹ His successor, Major John F. Hamtramck, abolished the governmental machinery established by Virginia, and "remained for three years the autocrat of the Wabash, the sole legislative, executive and judicial authority."²

Such a condition of affairs could not be permanent. In fact, the Congress of the Confederation had begun the consideration of the proper method of governing this territory within a few months after the ratification of the Treaty of 1783. The Ordinance of 1784³ provided a temporary government for the "Western Territory," though it was never put into actual operation. The Ordinance of 1785⁴ providing "for ascertaining the mode of disposing of lands in the Western Territory" was of much greater significance. The following provisions only are of interest in this connection: "The surveyors shall proceed to divide the said territory into townships of six miles square,"⁵ and "There shall be reserved the lot number 16 of every township, for the maintenance of public schools within the said township."⁶ This law as confirmed by the Congress of the United States has

¹ Dunn, *op. cit.*, 155-7.

² *Ibid.*, 262.

³ *Journals of Congress*, vol. vii, pp. 153-5, Phila., John Dunlap.

⁴ *Journals of Congress*, vol. ix, pp. 167-175.

⁵ *Ibid.*, p. 168.

⁶ *Ibid.*, p. 171.

had a marked influence upon the economic and institutional development of the West.¹ Here was already provided in advance an endowment for the common schools and a unit for local administration. The effect upon the township government and upon the administration of school affairs will be noticed hereafter.²

The Ordinance of 1787³ was probably the most important legislation fathered by the Congress of the Confederation. Certainly no other enactment left greater impress on the social, industrial and institutional life of the Northwest. It made provision for two grades of government. In the first stage the executive power of the territory was vested in a Governor; the judicial power, in a General Court composed of three Judges; and the legislative power in the Governor and Judges acting as a Legislative Council. These officers were appointed at first by Congress, and after the inauguration of the Federal Government, by the President. The legislative power was restricted by requiring the Governor and Judges to adopt and publish in the district such laws of the original States as might be necessary and best suited to the circumstances. These were to remain in force, unless disapproved by Congress, until the organization of the General Assembly.⁴ The Governor was, for the time being, commander-in-chief of the militia, and had power to appoint and commission all inferior militia officers and such magistrates and other civil officers in each county or township as he should find necessary for the preservation of the good order and peace.⁵ He was authorized to make proper divisions for the "execution of process, civil and criminal,"

¹ Shaw, A., *Local Government in Illinois*, p. 10, and Howard, *op. cit.*, 140.

² See pages 28 and 48 below.

³ Poore, B. P., *Constitutions and Charters*, I, pp. 429-432.

⁴ See page 20 below.

⁵ *Ordinance of 1787*, Sec. 8; Poore's *Const. and Charters*, vol. I, p. 430.

and was instructed to lay out counties and townships, subject, however, to such alterations as might thereafter be made by the Legislature.

As soon as it could be shown that the Territory contained 5000 free male inhabitants, the people were entitled to a government of the second grade. This offered them an opportunity to participate in politics by electing a House of Representatives. The House nominated ten persons, five of whom were selected by Congress¹ to compose the Council. All legislative powers were thereupon vested in the General Assembly, consisting of the House, Council and Governor, with the absolute power of veto residing in the latter. There was a slight diminution of the powers of the Governor over the magistrates and other civil officers; for their powers and duties were regulated and defined by the Assembly. Their appointment, however, still rested with the Governor.

Under the authority of this constitution, civil government was inaugurated in the Northwest Territory in 1788.² By virtue of the powers conferred upon him,³ Governor Arthur St. Clair proceeded to lay out counties, describe their boundaries, fix their county seats,⁴ appoint local officers, and define their powers.⁵ When the territory passed to the second grade the Legislature protested against the autocratic way in which the Governor exercised this authority. The controversy which arose between these two departments was not settled until the Governor was removed and Ohio was

¹ After 1789 by the President.

² Smith, W. H., *The Life and Public Services of Arthur St. Clair, with his Correspondence and other Papers*. (Hereafter referred to as the St. Clair Papers), i, pp. 140-1, p. 53.

³ See page 19 above.

⁴ *St. Clair Papers*, i, pp. 166, 195; ii, pp. 78-9, foot-note; pp. 131, 165, foot-note; p. 166, foot-note.

⁵ *Ibid.*, ii, p. 79, foot-note; p. 80, foot-note.

admitted as a State.¹ Upon the organization of the Indiana Territory in 1800, a government of the first grade was established. In respect to the creation of counties, the Governor had absolute authority² until this was modified by legislative control³ after the passage of the territory to the second grade of government.

In the county administration itself the most characteristic feature was the great authority which was vested in the courts. They were the first local civil offices established by law. Their jurisdiction was in the beginning wholly judicial.⁴ Administrative powers were first given to the courts of general quarter sessions of the peace in 1790,⁵ when they were directed to organize townships.⁶ Later, the authority of this court and of the court of common pleas was extended by giving them considerable control over the levying and expenditure of the county revenue, the issuing and revoking of liquor licenses, the opening and regulation of the highways and ferries, the erection and care of county prisons, the appointment of many local officers and the examination and supervision of their accounts. The extent to which the local administration was centralized in the hands of the court is shown by their extensive power of appointment. Of the twenty-five county offices⁷ established by law during this period, at least eight were filled by appointees of the courts; and eleven of the fifteen township officers were so appointed, two being filled by commissioners, who were

¹ *St. Clair Papers*, i, pp. 214, 221; ii, pp. 447-479; Burnet's *Notes*, p. 322.

² *Executive Journal of Indiana Territory in Indiana Hist. Soc. Pub.*, iii, pp. 77, 116.

³ *Terr. Laws*, 1808, p. 3; 1810, pp. 14, 19, 40; 1813, pp. 67, 91; 1814, p. 15.

⁴ Chase, S. P. (Ed.), *Statutes of Ohio and the Northwestern Territory* (1833), i, pp. 94-6.

⁵ Chase, i, p. 107.

⁶ See page 22, below.

⁷ The twenty-five county offices and the fifteen township offices were not all in existence at the same time.

themselves appointed by the courts and two,¹ only, being elected by popular vote.

Provision for the organization of townships was made in 1790 by authorizing the courts of general quarter sessions of the peace to divide their respective counties into townships, having due regard to the extent of the country and the number of inhabitants.² They were also empowered to appoint in each township a clerk, a constable and one or more overseers for the poor. This subdivision of the county was not, at this time, given a separate corporate existence. It seems merely to have been a minor area formed to facilitate the administration of the county and State business. Five years later the functions of townships were somewhat enlarged by conferring upon them some authority in respect to elections, taxation³ and the relief of the poor.⁴ At the same time the overseers of the poor were declared to be "bodies politic and corporate;"⁵ but the townships never became important administrative districts until after 1816.

The earliest permission for the incorporation of a town within the present bounds of Indiana was granted by the State of Virginia in 1783.⁶ Under this authority the town of Clarksville was settled two years later. The Borough of Vincennes was the first town incorporated under the laws of the Territory of Indiana.⁷ Villages certainly existed prior to that date, but they probably had no powers and no officers other than those belonging to the townships in which they were located. Several special town charters were granted by the general assembly of Indiana Territory. There was considerable variety in their organization and the

¹ Township assessors and auditors of the accounts of the overseers of the poor from 1795-1799.

² Chase, i, pp. 107-8.

³ *Ibid.*, i, pp. 168 ff.

⁴ *Ibid.*, pp. 175 ff.

⁵ *Ibid.*, sec. 16.

⁶ Hening's *Statutes*, vol. xi, p. 336.

⁷ *Territorial Laws*, 1805, p. 13.

extent of their powers. In some cases their authority was granted in quite broad and general terms; in others only a few specific powers were conferred. Practically the only field for local self-government was in the administration of these towns. The trustees of such corporations were generally elected by the resident land-holders¹ and were empowered to appoint the other town officers.

The intimate relation between the local administration and the territorial government is indicated by the arrangement which conferred upon the local courts almost complete control over the local government, and then made the members of the courts themselves the appointees of the territorial Governor. Besides, the chief executive appointed directly fifteen other county officers. The barriers in the way of local self-government set up by the Ordinance of 1787 have not been satisfactorily explained. The people themselves were favorably disposed towards this principle. The men who drafted and enacted the Ordinance were neither unfamiliar with, nor hostile to, such political ideas.² It was the opinion of Judge Chase that the temporary government was made unattractive so as to give the inhabitants strong reasons for entering the Union as States in order to enjoy greater political privileges.³ It may have seemed necessary, also, to establish "a strong-toned government" in order to secure the rights of property among the frontier people.⁴ It has also been suggested that the character of the population was an important consideration. In 1787 there were only a few widely scattered settlements, inhabited almost entirely by a people of French origin, who were unaccustomed and indifferent to local self-government.⁵ The Ordi-

¹ For a short time the trustees of Vincennes were elected by co-optation.

² Compare the introduction to *The Executive Journal of Indiana Territory*, pp. 79-80. See also pages 30, 31, below.

³ *Ibid.*, p. 81.

⁴ *Ibid.*, p. 81, R. H. Lee quoted.

⁵ *Ibid.*, pp. 81-2.

nance not only discouraged local self-government, but also revealed a distrust of legislative power. The high property qualification¹ required of electors and members of the General Assembly, the veto power of the Governor and his authority to convene, prorogue and dissolve the General Assembly, all reflect the conviction that the best interests of the inhabitants of the territory and of the Nation as a whole would be conserved by a concentration of power in the hands of an executive who would be more immediately responsible to the National Government. ✓

While there was nominally a remarkable central control in the territorial government, this power does not seem to have been used arbitrarily nor even efficiently. Twenty two of the twenty-five county officers served during good behavior or at the pleasure of the appointing power. But an examination of the Executive Journal of Indiana Territory reveals only one instance of the removal of a civil officer (a surveyor).² It is possible, however, that some of the numerous resignations were induced by pressure from the Governor. The failure to use this supervisory power effectually threw a heavier burden upon the Legislature.³

In studying the tendency towards centralization in administration in Indiana, the Public Schools command attention first. This is true, because in this field are found the earliest successful attempts in this direction, and because here is seen the most highly developed type of centralization. In the next chapter will be considered the establishment of the township system, the relation of State aid and central control, the evolution of the supervisory authorities, the present

¹ An elector was required to have a freehold of 50 acres; a representative, 200 acres, and a member of the legislative council, 500 acres. Sects. 9 and 11 of *Ordinance of 1787*.

² *Ex. Journ.*, p. 131.

³ See below, ch. v, sec. 1.

administration of the school system, and the schools for special classes. In the third chapter will be discussed Charities and Corrections. In this sphere thorough centralization, although entering but recently, is quite complete. A brief historical sketch of the establishment of the State charitable and correctional institutions will be followed by a fuller consideration of the work and influence of the Board of State Charities. Under the topic State Medicine will be found an examination of the composition and powers of the local and State boards of health; of the laws regulating the practice of medicine, dentistry, pharmacy and embalming; and of the method of preventing and suppressing the diseases of animals. The chapter dealing with taxation presents for consideration the conditions which prevailed when no centralization existed; the evolution of a method of equalization by local and State officers; the development of a centralized system of assessing corporations; and the absence of a central control over local finances. Under the head of Police will be treated the establishment of the metropolitan police boards; the differentiation of the police power; and the creation of special expert officers, charged with the protection of the life and health of persons in certain occupations, and the pecuniary interests of the people in general. The final chapter offers some generalizations which seem to the writer to be sustained by the facts presented in the preceding chapters.

CHAPTER II

PUBLIC EDUCATION

I. THE COMMON SCHOOLS

1. THE ABSENCE OF A SCHOOL SYSTEM DURING THE TERRITORIAL PERIOD

THE provision of the Ordinance of 1785 already mentioned,¹ reserving the sixteenth lot or section in every township for the maintenance of the public schools within the township, was the basis of the early legislation respecting schools. The Ordinance of 1787 which soon followed this, declared that "religion, morality and knowledge being necessary to the good government and the happiness of mankind," schools and the means of education should be forever encouraged. But during the territorial period such encouragement was scant indeed. What little legislation there was in respect to common schools had reference solely to the care or protection of this estate.

In 1799 an act prohibiting the cutting of timber on lands reserved for the use and support of schools or of religion, gave authority to overseers of the poor to institute proceedings against trespassers.² This was the beginning of that very extensive control over school affairs which is exercised by the township trustee to this day. In 1808, six years before the lands were actually granted to the State for the use of the townships, the Legislature of Indiana Territory established a provisional leasing system under the adminis-

¹ See page 18 above.

² Chase, i, p. 221.

tration of the court of common pleas in each county.¹ Two years later these courts were empowered to appoint a "trustee of school lands" for each township, whose duty it was to lease the lands under such restrictions as the court might impose.² Though the Territorial Assemblies were urged to make provision for this vital interest they did nothing of a practical nature prior to 1816. The important matter of education was left to the few schools which had been established under private control.³

The regard in which the people held public education must not be estimated from the meagre legislation of this period. They appreciated the advantages and the importance of the public schools; but they felt that this laudable desire for higher things must for a time remain ungratified, while more pressing needs were demanding their thought, their energy, their strength and their resources. The settlers almost universally were poor and widely scattered. The struggle for existence was fierce and unceasing. Forests had to be cleared away; swamps, drained; roads and bridges, built; lands, tilled; and all this amid the ever-present dangers and difficulties incident to frontier life. Small wonder, then, that during the first thirty years of her history as a Territory and State, nothing deserving the name of a "public school system" existed in Indiana. The spirit and the ideals of the pioneers must be sought not in the statutes but in the Constitution. Somehow in that period of struggle and hardship and disappointment, in the minds of the practical and hard-headed pioneer leaders, there had arisen the ideal of a free school system, based upon the principles of uniformity and State support. These principles were embodied in the Constitution of 1816. It was made

¹ *Terr. Laws*, 1808, p. 36.

² *Terr. Laws*, 1810, p. 46.

³ Boone, R. G., *History of Education in Indiana*, p. 21-2.

the duty of the General Assembly "to provide by law, for a general system of education, ascending in a regular gradation from township schools to a State University, wherein tuition shall be gratis and equally open to all."¹

2. THE STRUGGLE TO ESTABLISH A TOWNSHIP SYSTEM

The tendency towards State centralization in the administration of schools has been attended by a similar movement in the direction of local centralization. A review of the struggle to supplant the "district system" with the "township system" will, in part, explain the conditions which determined the educational life of the State, and will thus contribute to a better understanding of the difficulties which impeded progress for half a century.

The division of the land into townships by the congressional survey and the reservation of the sixteenth section of each township for the use of the inhabitants thereof, for school purposes, betokened, before any statute to that effect, that the township would be the natural unit of the school system. The earliest State laws in respect to schools and school lands recognized this natural division.² An act of 1816 authorized the election, upon the petition of twenty house-holders, of three trustees in each congressional township who were declared to be a "body corporate in deed and fact" with full power to make by-laws or regulations for the encouragement and support of the schools in the township.³

The law of 1824⁴—the first serious attempt to establish a public school system—provided for the incorporation of congressional townships,⁵ and vested in the corporations the

¹ *Constitution of 1816*, article ix, section 2.

² *Laws, Sess.*, 1816-17, pp. 104-6; 1818-9, pp. 57-9; 1827-8, p. 112.

³ *Ibid.*, 1816-7, pp. 104-6.

⁴ *Revised Statutes*, 1824, pp. 379-385.

⁵ As in 1816.

reserved school lands with certain limitations as to their lease and sale. It then proceeded to give the trustees authority to divide the township into school districts, and to appoint three sub-trustees in each district. These officials were accountable to the township trustees for any misconduct in the discharge of their duties; they were subject to dismissal from office after a hearing, and were also liable to prosecution.

Here was the inauguration of the "district system," an arrangement which left to small territorial areas, thinly inhabited, the control and management of their school affairs. The inhabitants of the district determined whether or not they should have any school at all, the site of the school house, the length of the term (in case it exceeded three months) and the method of payment of the tax. No county, township or district officer had any authority to regulate the use of text-books, the course of study, or the methods of discipline and instruction. The districts depended upon the township trustees for three things only: the appointment of the sub-trustees, the levy of the local tuition revenue, in case such a levy was necessary, and the examination of the teachers. These powers might have been used by the trustees to secure a small degree of local centralization, which would have preserved the township unit; but they were not so utilized.

At that time the educational outlook was not bright. There were only 52 counties organized in the State. "Few townships were officered, and fewer yet maintained schools;" and in these tuition was not always free. The terms seldom exceeded the minimum of three months. The school revenues were totally inadequate "both from the neglect of the lands and mismanagement of the funds." "With the ex-

¹ Boone, *op cit.*, p. 26.

ception of county seminaries¹ deriving some aid from the penal code and the township rents accruing to the State University, there exists no active fund for education to which resort could be had; and the pittance of rent from some sixteenth sections is entirely inadequate to effect the object at this time."²

The explanation of the substitution of the district for the township as the unit of the school system must be sought in the physical environment of the people, and in their preconceived ideas of local self-government. It is probable that the location of the "sixteenth section" had almost no influence in determining the place of settlement of families or colonies immigrating to the State. At least a careful examination of a map of the State does not show that the villages, towns or cities are located more frequently in the vicinity of the school section than in any other section. Other considerations more potent, if not more worthy, guided the settlers in the choice of lands and in the location of villages. Chief of these were nearness to water-courses and water-sources, productiveness of the land (considering their means of cultivation), protection against the attacks of the Indians, and the relationships or friendships with earlier pioneers. Communities were often far apart, and this isolation was still further aggravated by the insufficient means of communication and transportation. In 1820 the total population was less than 150,000; and in three-fourths of the State it averaged less than two to the square mile. The area of a congressional township was thirty-six square miles. In order to have had a meeting of the inhabitants for school purposes,

¹ The establishment of county seminaries was authorized in 1824. These schools were intended to furnish secondary instruction; but in fact, generally included in their course of study the elementary branches as well. *Rev. Stat.*, 1824, pp. 116-120.

² *Report of Senate Committee on Education, Sen. Jour.*, 1825-1826, p. 104.

perhaps one-half of them would have found it necessary to travel over almost impassable roads a distance of four or five miles. A single school for all the children of the township was an impossibility. Neighborhoods were often jealous and even bitter in their feelings towards one another. With these obstacles to township unity it seemed but natural to provide schools for the separate neighborhoods as the people of those districts wished.

In addition to these local considerations there was a deep-seated conviction of the sacredness of local self-government. During the Colonial and Revolutionary periods there had developed in America an extreme type of particularism. When the pioneers crossed the Alleghenies and settled in the Mississippi Valley, they carried with them their particularistic ideas. In this sparsely settled region, in self-reliant communities, their individualism had an opportunity for almost unchecked growth. The isolated condition, the dependence upon self-help in a multitude of activities, the self-sufficiency of the separate localities, all stimulated in the individual the ideas of equality and self-assurance; and in the community an unshaken confidence in a localized administration of all civil affairs.¹ In the matters of education, each citizen claimed the right to give his children the kind and the degree of education which he deemed sufficient, and the district insisted upon the same right, irrespective of the larger interests and welfare of the township, county or state. During the next decade the idea of local self-government was carried still further.

In 1833 the slight connection* existing between the district and township was severed. The office of sub-trustee

¹ Compare Professor F. J. Turner's *The Significance of the Frontier in American History*, in Annual Report of the American Historical Association for 1893, especially pages 216, 221-3, 226-8.

² See page 29 above.

was abolished. Three trustees for each school district were to be elected annually thereafter by the qualified voters of the district. They were no longer removable from office by the township trustees, but by the vote of a majority of the patrons in the district. The inhabitants of any district decided whether or not to maintain a school, and determined the amount and character of the tax for building purposes and the proportion each should pay, taking into "consideration the number of each person's children to be educated, and other equitable circumstances." After the school house was once erected and paid for, no person was liable for school taxes "unless he intends to or does participate in the benefit of the school fund." Any one was allowed to send children to such a school free from any other tax than his just proportion of the labor and money necessary to repair or rebuild the school house, "he fulfilling his own contract with the teacher for tuition, fuel and contingencies as in other cases." The district treasurer was required to credit each inhabitant of the district his due proportion of school moneys, based upon the number of days of attendance of his children, and to pay over the said funds "to the teacher to be applied in due proportion to the discharge of the debt due for tuition from each person entitled to the benefit of such funds, if a contract to that effect should have been made by such teacher with the inhabitants or with the district trustees."¹ A show of financial supervision was made in the requirement that the books, papers and accounts of the school commissioner, or of the trustees or treasurer of any district or township, should be subject to the inspection of the board of county commissioners. This local control

¹ In case the district trustee, in the absence of any directions by the district meeting, had contracted that the patrons should pay the teacher a gross sum per month or year, the amount charged against any inhabitant was in the same ratio to the total salary as the aggregate tuition imparted to the pupils sent by him bore to the aggregate tuition of all the pupils sent to the school.

was neutralized by the ludicrous proviso that three days' notice should be given, by process issued by the clerk of the board on the petition of five freeholders or householders of the district, township or county.¹ This deprived the county commissioners of all power to initiate investigations and gave opportunity to conceal frauds.

The extent to which the theory of decentralization was carried can be inferred from the fact that schools established by religious denominations and by private associations were considered district schools, and were entitled by law to a share of the school revenues and to all other privileges of public schools.²

In 1836 and 1837 it was made lawful for any householder to employ a "qualified and certificated" teacher to instruct his children and the children of others of the district who might wish to join with him, upon such contract as he could make; provided the inhabitants should fail to elect district trustees, or the trustees should neglect to take the sense of the district on the question of the maintenance of a school. And any person so supplying a teacher was entitled to his proportion of the revenue of the township.³ There were many schools of this kind.⁴

It would seem possible to go no further in the matter of decentralization unless the requirement of a teacher's certificate should be abolished. Indeed, we find that in 1841 this was left to the option of the district trustees.⁵ But the same year showed a slight reaction from this extreme individualism. All the property within the district was made subject to any tax imposed for building school houses. A

¹ *Laws, Sess.* 1832-3, pp. 89, 93, 94, 96-100.

² *Laws, Sess.* 1833-4, pp. 327-9; *Spec. Laws, Sess.*, 1834-5, pp. 122-4; *Laws, Sess.* 1840-1, p. 85; *Ibid.*, 1848-9, p. 130.

³ *Laws*, 1835-6, pp. 78-80; 1836-7, p. 39.

⁴ Boone, *op cit.*, p. 34.

⁵ *Laws*, 1840-1, p. 86.

closer supervision of school funds was provided and the township treasurer was required to distribute the revenue of his township among the districts in proportion to the number of children between the ages of five and twenty-one years.¹

The legitimate fruits of this ill-conceived system of district schools were shown to be: (1) inequality in the length of the school terms, in the efficiency of schools, and in the cost of the maintenance of schools within the same township; (2) a greater expensiveness, because of the multiplicity of officers and the continuance of small schools; (3) incompetency of teachers, because of frequent changes and partiality and favoritism in their selection; (4) inefficiency in instruction, because of diversity of text-books and difficulty in grading and classifying pupils; (5) laxity in the enforcement of school laws, because of the absence of supervision and the ignorance and indifference of the petty school officers; (6) wasteful administration of public school funds and revenues; (7) neighborhood quarrels over the sites of buildings and boundaries of districts; (8) narrow and selfish views as to the ends of public instruction.² All this was the outgrowth of an exaggerated idea of the virtues of local self-government.

During the seven years prior to 1843, the unfavorable

¹ *Laws*, 1840-1, pp. 53, 72, 81.

² Compare Boone, *op cit.*, p. 148. In 1840 the House Committee on Education in an elaborate report on the subject of schools, declared that the existing plan "scarce deserves the name of system." "It is a multitude of systems, having no accountability to each other, or to any higher powers." "We present almost the only example of a state professing to have in force a system of common school education, which does not know the amount or condition of its school funds, the number of schools and scholars to be taught and to receive a distribution of those funds." *House Journal*, 1839-40, p. 365. Governor Bigger in his message in 1842 declared: "Our schools are a mass of complicated statutory provisions, presenting difficulties even to the disciplined legal mind, which are almost insuperable to the ordinary citizen." *Doc. Journ.*, 1841-2, *House Rep'ts.* p. 148.

condition of school affairs received most serious consideration by the leading educators and statesmen. It is evident from the speeches and addresses of prominent men and from the reports of officers and legislative committees that the most intelligent opinion was in favor of some attempt at a centralized system.¹ The revelations made by these utterances finally moved the legislators to action. We find in the revised school law of 1843 an important step towards an intelligent supervision under State authority. The Treasurer of the State was declared by law² to be the Superintendent of Common Schools. His duties were chiefly financial and statistical. No authority to direct the educational policy was given him. However, the first thing necessary to develop a satisfactory school system was to secure full, reliable and accurate information as to funds, revenues, schools and children of school age. A beginning in this direction was made by this act.

This material advance towards centralization was attended by a considerable degree of local centralization. In the absence of instructions by the district meeting, the district trustee was empowered to contract with a teacher. He also was given authority to determine what branches should be taught. Taxes levied by the district meeting were thereafter to be assessed and collected by county officers and not by district officers. Much more important was the requirement that any such tax should be assessed upon all the taxable property of the district, except that of negroes and mulattoes who were not entitled to the privileges of the schools.³

Pursuant to the recommendation of the General Assembly at its thirty-first session a "Convention of the Friends of

¹ See pages 42-44, 63, 74-76 below.

² *Rev. Stat.*, 1843, pp. 324-5.

³ *Rev. Stat.*, 1843, pp. 313-315, 322-324.

the Common Schools" met at Indianapolis May 26, 1847. Its committees drafted a bill to provide for the improvement of common schools and an address to the people.¹ The report accompanying the bill was very exhaustive in its review of the situation of the schools and school funds. In the address to the people it was stated that in 1847 one-seventh of the people over twenty years of age could neither read nor write; that 30,000 voters in Indiana were illiterate; and that the annual expenditure for education was only about \$125,000.² The only important act of the General Assembly at this time was a law submitting to a popular vote the question of the support of the common schools by general taxation.³ The result of the vote was in favor of State-established, State-supported and State-controlled schools.

The Legislature soon afterwards proceeded to enact a law which gave greater security to school funds and greater accuracy to reports, inaugurated the policy of State support of the schools by means of general taxation, and strengthened the local centralization. The number of trustees in each district was reduced from three to one. Besides attending to the business of the district, the trustee was made "the organ of communication between the district and the board of township trustees" to whom he was expected to make "such suggestions as may advance the educational interests of his district." In addition, he was required to make reports to the clerk of the township board. Acceptance of the offices of township and district trustees was made obligatory. The township was made the unit for the distribution of the school funds. The township trustees were required to provide a sufficient number of schools to accommodate the pupils of their townships for at least three

¹ *Doc. Journ.*, 1847-8, Pt. ii, pp. 141 ff.

² *Ibid.*, pp. 170, 173, 182-3.

³ *Laws*, 1847-8, p. 48.

months annually. All schools of the township were to have school terms of equal length. Schools established by private liberality were still entitled to their just and equitable allowance from the public funds.¹ The worst defect of the law was the proviso that left it to each county to determine whether or not the law should operate within its jurisdiction. At the first election following its enactment, the law was adopted in fifty-four counties.

The definitive step in this tedious transition from the district to the township system was taken in 1852. This law was mandatory in character and applied to every county and every district. A uniform system of administration was created for civil townships, and the political functions were taken away from the congressional townships. Each civil township was declared to be a township for school purposes, and the township officers, to be school officers.² The three trustees³ had power to manage the schools and school lands in nearly the same way as at present.⁴ Incorporated cities and towns were for the first time made school corporations independent of the townships in which they were situated. They were declared to be entitled to their proportionate share of school funds, and given power to establish graded schools. All school corporations were empowered to levy taxes for building purposes and for the support of schools after the public funds were exhausted.⁵

There was a slight reaction towards a recognition of the

¹ *Laws*, 1848-9. pp. 125-128, 130.

² *Rev. Stat.*, 1852, i, p. 440. In 1855 the county commissioners were instructed to make the boundaries of the civil townships coincide as nearly as possible with those of the congressional townships. This simplified the distribution of the revenue from the congressional township fund. *Laws*, 1855, p. 181.

³ Under the law of 1859 one trustee was elected in each township. *Laws*, 1859, p. 220.

⁴ See below, ch. i, sec. 5.

⁵ *Rev. Stat.*, 1852, i, pp. 444, 454.

district system in 1855. The patrons of a school were authorized to hold an annual meeting at which they might elect a school director with slight authority. The school meeting was given considerable power in respect to the designation and dismissal of teachers, the determination of the course of study, *et cetera*.¹ This change was made in the hope that it would reconcile the friends of the old system and harmonize their views and predilections with the new principles. But it proved to be a division of local authority which led to frequent conflicts between the township trustees and the directors of the districts.²

In response to the official protests against this evil, the Legislature in 1865 gave school trustees power to employ teachers without considering the wishes of patrons.³ In order to protect the people against any unfair and arbitrary action on the part of the trustee, he was in 1883 forbidden to employ any teacher against whom a majority of the patrons might formally protest and was required to dismiss a teacher upon their petition.⁴

The latest phase of this centralizing tendency in local school administration is seen in the disposition to abandon the weaker school districts and provide transportation for the pupils to larger schools. In the year 1899-1900 there were within the State 108 schools having fewer than five pupils, and 487 schools having between five and ten pupils, in average daily attendance.⁵ The cost of collecting the pupils into larger schools would be much less than the cost

¹ *Laws*, 1855, pp. 176-7.

² A large percentage of the difficulties reported to the State Superintendent's office for settlement arose from attempts to designate teachers. *Bien. Report State Supt. Pub. Instr.* for 1863-4, p. 58.

³ *Laws, Reg. Sess.*, 1865, p. 6; see also *Laws*, 1873, p. 68.

⁴ *Laws*, 1883, p. 31.

⁵ *Bien. Report State Supt. Jones* for 1899-1900, p. 524.

of instruction in the small schools. Already the experiment has been made in forty of the ninety-two counties with satisfactory results.¹ The abandonment of the weaker schools has been given a new legal sanction by recent legislation. The township trustee may upon his own authority abandon any school that has "an average daily attendance of twelve pupils or fewer," and consolidate the schools with those of an adjacent district. With the written consent of a majority of the voters of any school district he may, and upon their petition he must, take such action.² While these laws do not explicitly authorize trustees to expend revenue for the transportation of pupils, a recent official opinion of the State Superintendent declares that they have that power. The stronger arguments seem to be in favor of consolidation.³ This movement emphasizes with force the contrast between the doctrines that prevailed seventy years ago and those of the present.

It has been said that Indiana was "the first State in the Union to incorporate it [the township system] into her educational code." However that may be, it was certainly an innovation of the greatest import. Gradually it came to mean the diminution of the expenses of administration, the equalization of opportunities within the township, the employment of more competent teachers with longer tenure, and greater professional interest and ambition. In the place of narrow localized interests and neighborhood quarrels and factions, it led to the expansion of interest, sympathy and civic pride so as to include the civil and educational welfare of each citizen of the larger community.

¹ *Bien. Report State Supt. Jones for 1899-1900*, pp. 529-557.

² *Laws*, 1901, pp. 159, 437.

³ *Bien. Report State Supt. Jones for 1899 and 1900*, pp. 526-8.

3. STATE AID AND CENTRAL CONTROL

In a more detailed examination of the centralizing tendency in school administration, the development of central control over school finances occupies an important place. It would seem to be a general principle that where an individual or a corporation, public or private, stands sponsor for an enterprise by furnishing periodically the means for its prosecution, some accountability to the promoters would be required. The grantor or benefactor wishes to know that the funds are wisely and economically expended for the particular purpose in view. It will be seen from the following pages that just as the State's financial interest in the schools increased, that is, just as it assumed, by means of general taxation or otherwise, the burdens of maintaining the system, so its control over the expenditures, reports and instruction increased.

The school revenues were derived from several sources: permanent funds, local and general taxation, fines, forfeitures, *et cetera*. Until consolidation was effected, in 1852, there was considerable difference in the objects of the expenditure and in the administration of the various funds. A clearer view of the subject may be obtained, therefore, by treating them separately.

I. *The Congressional Township Fund.* The first governmental endowment of the public schools in Indiana came from the Congress of the Confederation.¹ By the act enabling the people of Indiana Territory to form a Constitution and to organize a State government, the "sixteenth section" of land was again conditionally granted to the inhabitants of each township for the use of schools.² The condition was accepted by the State, and the Constitution adopted in 1816 required the

¹ *Journal of Congress*, ix, p. 171. See also p. 18.

² *U. S. Statutes*, iii, p. 290.

General Assembly "to provide by law for the improvement of the lands and to apply any funds which might be raised from them or from any other quarter to the accomplishment of the grand object for which they are intended."¹ The proceeds arising from the sale of such lands or otherwise obtained for school purposes, were to "remain a fund for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools."² The interpretation which was given to this language by the executive and judicial officers of the State government seems reasonable. It was held that this land had been granted to the inhabitants of each township for school purposes, and that the State control over the funds arising therefrom extended only to their protection and administration.³ While under this construction there was a ground for the exercise of State supervision to a certain extent, there was apparent justification of that deference which Legislatures continually showed towards local sentiment.

Prior to 1843 there were tried three methods of managing school lands and the funds derived from them. During part of this time all three methods were in operation, and the choice of the plan was in each case left to the voters of the congressional township. At first the lands were put in charge of a "superintendent of school lands" or (in case of incorporation⁴) of trustees in each congressional township.⁵ The second method gave to the inhabitants of a congressional township the privilege of selling their lands⁶ and

¹ *Constitution*, 1816, art. ix, sect. 1, and *Ordinance of 1816*.

² *Constitution of 1816*, art. ix, sect. 1.

³ *6 Indiana Reports*, pp. 87, 96.

⁴ See page 28 above.

⁵ *Laws*, 1816-7, pp. 104, 106; 1818-9, pp. 57-9; *Rev. Stat.*, 1824, 379.

⁶ *Laws*, 1826-7, p. 103; 1827-8, p. 112, and *U. S. Statutes*, iv, p. 558.

entrusting the proceeds to a "county school commissioner" elected by the people.¹ It was his duty to loan the money on proper security, and to distribute to each township the income from its own funds. He had no control over the school funds of any township which declined to sell its lands. This seemed to be a step towards local centralization. The opportunity to dispose of the lands was quickly seized, and by 1843 more than a million dollars was thus realized. While this policy provided funds for immediate use, it must be regarded as extremely short-sighted. Most of this land was sold at \$1.25 per acre. If it had been carefully husbanded, it would now in many townships furnish annual revenue sufficient to maintain schools for ten months without one cent of local taxation for tuition purposes.²

The third experiment was made in 1831. The electors of the township were empowered to determine by vote whether or not the money derived from the sale of school lands should be loaned by the school commissioner or be deposited in the State loan office.³ The money placed in the loan office was to constitute "a perpetual fund, set apart for the purpose of township free schools;" and the faith of the State was solemnly pledged to the regular annual payment of interest at six per cent. to the township properly entitled to receive it. The school commissioner was still required to loan school moneys not deposited in the loan office.⁴ This step towards State centralization was neutralized by granting each township the right to retain or to recall⁵ the

¹ *Laws*, 1828-9, pp. 12-18, 122-3; 1829-30, p. 150.

² See illustration of this fact in Supt. D. M. Greeting's *Report* for 1895 and 1896, pp. 293-5.

³ *Rev. Stat.*, 1831, p. 468. The loan office under the superintendence of the State Treasurer had been created in 1828 for the purpose of loaning the funds of the Indiana College. *Laws*, 1827-8, pp. 127-130.

⁴ *Rev. Stat.*, 1831, p. 468.

⁵ *Laws*, 1840-1, pp. 146-7.

money if the voters preferred to do so. In fact, little advantage was taken of this privilege, and the total amount on deposit with the Treasurer of State from 1831 to 1851 never at any one time exceeded \$2,000.¹

It has already been stated that from 1837 there was a growing conviction that a greater degree of centralization was absolutely necessary to secure any development of the school system. Messages of governors² and reports of officers³ and legislative committees⁴ during the next five years, contained many urgent appeals for a thorough investigation of the school funds and for the establishment of the office of State Superintendent.

As early as 1819 there had been required of the local financial officers some sort of accountability to the boards charged with the county business. But this control was neither exacting nor efficient. In reference to the subject of education, Governor Bigger declared in his message of December, 1841, that it was almost impossible to ascertain the amount or the condition of the funds appropriated for the benefit of common schools. "This condition," he says, "points to the propriety of appointing some suitable agent or agents to examine into and report the general condition of the school funds of the State."⁵ The Legislature at that session did not respond heartily to this sensible suggestion. But the Auditor of State was so deeply interested in the matter that he proceeded upon his own responsibility to

¹ *Rep't Treas.*, 1835, *Sen. Journ.*, 1835-6, p. 57; *Rep'ts of Auditor*, 1844, *Doc. Journ.*, 1844-5, Pt. i, p. 48; *Ibid.*, 1855-6, Pt. i, p. 286.

² *House Journ.*, 1839-40, p. 26, and *Doc. Journ.*, 1840-1, *House Reports*, p. 115; *Doc. Journ.*, 1841-2, *House Reports*, p. 148.

³ *Report of Auditor*, 1842, *Doc. Journ.*, 1842-3, *House Rep'ts*, pp. 89-93.

⁴ *House Journ.*, 1838-9, pp. 414 to 427; *Ibid.*, 1839-40, p. 393; *Doc. Journ.*, 1840-1, *House Rep'ts*, pp. 513-17.

⁵ *Doc. Journ.*, 1841-2, *House Rep'ts*, pp. 85-6.

address circulars to the various county auditors, with a view to the collection of information which would enable the Executive to show the Legislature the necessity of giving the subject a more thorough consideration. Answers were received from fifty-eight counties which were in many instances quite defective. The delays in the twenty-nine remaining counties were attributed to the sickness of county commissioners, to the want of commissioners' reports, or to the impossibility of obtaining the required information from the books of commissioners.¹

The evidence submitted by him was so convincing of the need of stricter supervision that the Legislature of 1843 was induced to take an important step towards the realization of a central control. The office of Superintendent of Common Schools was created, the duties of which were to be performed by the Treasurer of State. He was required to submit to the General Assembly an annual report containing: (1) statements concerning the condition and amount of the school funds, the property of the State University and other incorporated colleges and academies in the State, and the county seminaries and common schools, both public and private; (2) estimates and accounts of expenditures of the public school moneys; (3) plans for the management and improvement of the common school fund and for the better

¹ The auditor estimated the missing counties at an average of the other counties, and reported the following facts:

Average amount of revenue received by each pupil attending	\$0 84
The total value of all school funds.....	2,254,597 00
The amount of interest from the different sources which should be paid out annually.....	146,298 00
The amount actually disbursed	94,436 00
Deficit in the annual disbursements unaccounted for.	51,862 00

He declared that the actual loss could not be known until a change in the system was effected. *Report of Auditor, 1842, Doc. Journ., 1842-3, House Rep'ts, pp. 89-93.*

organization of the common schools; and (4) all matters relating to the cause of education which he should deem expedient to communicate. He was empowered to exact of all school officers copies of all reports required to be made by them; and to call for other information in relation to their duties respecting the school funds, property and the management of schools and seminaries, as he might deem important. He was authorized to prepare forms and regulations for reports and to issue instructions for the better organization and government of common schools and county seminaries.¹ The security of the surplus revenue fund and the congressional township fund was more carefully guarded, and the accountability of officers charged with their management was more effectively secured. The loaning of these funds was entrusted to the county auditors. The several counties were declared liable for the preservation of the funds and the payment of the annual interest at the rate established by law. The county board of each county was required to examine annually the accounts and proceedings of the county auditor and treasurer, and to report the result of the examination to the Auditor of State and the Superintendent of Schools.²

The progress towards uniformity and centralization desired to be secured by these provisions was obstructed by the special laws regulating the management of school moneys, which were enacted for seventeen different counties during the period from 1843 to 1851.³ These special acts were most pernicious. They not only exempted localities from the operation of general laws; but they protected delinquent

¹ *Rev. Stat.*, 1843, pp. 324-5.

² *Rev. Stat.*, 1843, pp. 251-5.

³ *Laws*, 1843-4, pp. 66, 67; 1845-6, p. 102; 1849-50, p. 194; 1850-1, pp. 60, 165; *Local Laws*, 1844-5, pp. 61, 117; *Special Laws*, 1846-7, pp. 91, 381; 1847-8, pp. 256, 460.

or peculating officials by relieving them and their securities of any liability, and forbidding the courts to take jurisdiction in any suit instituted against them. "The General Assembly seemed to act on the principle that the people of the counties, being ultimately responsible themselves, had a perfect right to determine this matter."¹ In the face of such a sentiment it may readily be inferred that the operation of the laws was unsatisfactory. In 1843 the Auditor stated that no reports showing the amount of school funds derived from the surplus revenue and the school sections and the amount of interest accruing therefrom, had been received for that year from twenty-three out of eighty-seven counties.² However, the information which was obtained demonstrated the utter carelessness, not to say fraud, with which this fund was managed.³

In his first annual report the Superintendent of Common

¹ *Debates of Constitutional Convention*, 1850-1, vol. ii, pp. 1881-2; *Local Laws*, 1851, pp. 41-2.

² *Report of Auditor, Doc. Journ.*, 1843-4, *House Rep'ts*, p. 138.

³ One county auditor says: "To get at that kind of a statement..... is a matter of impossibility, because the accounts of each agent and each year are mixed and entangled so that they cannot be distinguished one from another. The whole matter of accounts from beginning to end is a complete mass of unintelligible complication." Another says: "There can be but little doubt with regard to the bad management of this fund until within a few years..... We can rely only on the reports..... for the last two or three years." Another regrets that the "second school commissioner kept no account current; the books show the amount he received, but neither the books nor reports show what he paid out. I have searched the papers diligently for receipts, but cannot find them." Another, after examining the books and papers of the school commissioner, was "at a loss to know what to do with them." Another complains that "the books of this fund [congressional township] are in a very bad condition." Still another declares that "the school commissioner has made no report to the county board (so far as I can ascertain) since 1838..... The fund is loosely managed." Another states that "the accounts of the two first commissioners were a chaotic mass; sales of land, rents, interest, loans made and loans refunded, and payments to township trustees, being all mixed up together." *Rep't of Auditor, Doc. Journ.*, 1843-4, *House Rep'ts*, pp. 142, 152, 185, 199, 227, 230, 246.

Schools deplored the meagerness of his statistics. He reported the total school fund of the State at \$2,017,764, of which \$31,592 are set down as "doubtful," and \$22,300 as "lost." He feared that further returns would largely increase the items of "lost" and "doubtful" debts.¹

The very incompleteness of the returns which local officials were required to make to the Superintendent of Common Schools was in one sense satisfactory to the advocates of centralization; because it was convincing evidence of the inefficiency and wastefulness of the administration of school finances; and it proved beyond cavil the prime necessity of strict central control over the whole subject of school affairs. The State Treasurer repeatedly urged the propriety of committing such duties to an officer having no other functions.

The law of 1849, imposing a general tax for school purposes, abolished the office of school commissioner in any county which adopted the law, transferred his fiscal duties to the county auditor and established a stricter system of reports.²

The constitution of 1851 created the office of State Superintendent of Public Instruction and provided for the consolidation of all of the school funds into one "Common School Fund." The principal was to remain a perpetual fund, which might be increased, but should never be diminished; and the income should be inviolably appropriated to the support of common schools, and to no other purpose whatever. Provision was made for the investment

¹ *Rep't Sup't Com. Schools for 1843, Doc. Journ., 1843-4, House Rep'ts*, pp. 329-30. In his reports for 1845 and 1846 he again spoke of "the scanty information" reported to his office. *Ibid.*, 1845-6, Pt. ii, pp. 103-5; 1846-7, Pt. ii, pp. 122-130.

² See pages 37 and 66 below.

³ *Laws*, 1848-9, p. 129, and sects. 18, 19, 23.

by the General Assembly of the portion not distributed to the counties; and the several counties were declared liable for the preservation of that part entrusted to them, and for the payment of the annual interest thereon. All trust funds held by the State were declared inviolate, to be exclusively applied to the purposes for which the trust was created.¹

The Legislature immediately abolished the office of school commissioner in all counties, and ordered the school funds to be loaned by the county auditors. The county treasurers and auditors were made subject to a stricter control by the boards of county commissioners.² This plan of unifying and consolidating the system was unexpectedly obstructed. The Supreme Court held that it had been the intention of the Federal Government to reserve the sixteenth section in each township for the exclusive use of the inhabitants of the township for school purposes; that this grant had been accepted by the State by a solemn ordinance of their first constitutional convention, and had been so construed by the State government and State judiciary since then; that the second constitutional convention had ordained that, "All trust funds, held by the State, shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created;" and that that part of the law of 1852 consolidating this fund into the general school fund was unconstitutional and void. "The supervision exercised by the Legislature over the township fund is but an implied necessity sanctioned by Congress. It extends only to protecting and administering, not diverting, the fund."³

Guided by this decision, the Legislature in 1855 provided for the consolidation of all the other funds, but set the con-

¹ *Constitution*, 1851, art. viii, sects. 2, 3, 6 and 7.

² *Rev. Stat.*, 1852, pp. 445, 447, 448, 455.

³ *State of Ind. et al. vs. Springfield Township in Franklin County*, 6 *Ind. Rep'ts.*, pp. 87-96.

gressional township fund aside as a separate fund, the income of which was to be exclusively devoted to the support of schools in the respective townships from which the fund was derived.¹ That the law of 1852 was not popular may be readily inferred from the statements of trustees and unofficial persons² and from the reports of the State Superintendent of Public Instruction and the Auditor of State.³ While the distribution of the income arising from the congressional township fund was made on a different basis, the administration of it was the same as the common school fund, and needs no further separate treatment. The total amount realized from this source is \$2,467,655.⁴

The early management of this trust has been aptly described by the Supreme Court in the following language: "Under their operation [the laws prior to 1851] large sums were wasted, and some of the most valuable lands in the State sacrificed without producing any perceptible result. Every step in legislation seemed to involve the system in greater expense and difficulty, until inefficiency, confusion and waste seemed to be the legitimate offspring of our legislation on that subject."⁵

II. *The County Seminary Funds.* The ideal school system as outlined by the framers of the first Constitution contemplated a "general system of education, ascending in a regular gradation from township schools to a State University." To meet the need of secondary instruction it was intended to establish county seminaries. The Constitution, in order to further this purpose, provided that money paid for

¹ *Laws*, 1855, pp. 161 and 175-6.

² *Rep't Supt. Pub. Instr.*, 1853, *Doc. Journ.*, 1853, pp. 129-141.

³ *Rep't Auditor*, 1852, *Doc. Journ.*, 1852-3, Pt. I, p. 97.

⁴ This does not include 965 acres of unsold land, valued at \$32,388. *Bien. Rep't State Supt. Pub. Instr.* for 1899-1900, p. 369.

⁵ *Ind. Rep'ts*, p. 561.

exemption from military duty on account of conscientious scruples should be applied in equal proportion to the support of county seminaries; and that all fines assessed for any breach of the penal laws should be applied to the seminaries of the county in which they should be assessed.¹ It will be seen that the former was considered a State fund and the latter a local fund. Possibly it was intended to give each community an incentive to enforce the penal laws rigidly in order to increase its local tuition revenue.

Early in 1817 laws were enacted to put these clauses into operation.² One year later the first act directing the management of the seminary funds was passed. The Governor was authorized to appoint in each county a "trustee of the public seminary funds," who was charged with the duty of collecting and caring for the moneys properly belonging to this fund. He was required to transmit annually to the Speaker of the House of Representatives a certified list of all receipts.³

This was the first step towards a central supervision over any of the school funds. A mistake was made in requiring the returns to be made to a legislative, instead of an administrative, officer. But here was, at least, an opportunity which should not have been injudiciously thrown away. This control was lessened four years later by requiring the report to be made to the board of county commissioners and to be sent by them to the Speaker.⁴ These laws failed in their purpose because there was no superior executive authority to see to their strict enforcement. Large sums of money were lost or wasted, and the Legislature had no reliable information as to their amount or safety. As early as 1823,

¹ *Constitution*, 1816, art. ix, sect. 3.

² *Laws*, 1816-7, p. 155.

³ *Laws*, 1817-8, pp. 355-7.

⁴ *Laws*, 1821-2, p. 124.

Governor Hendricks said, "It is hazarding little to say that in many of the counties, these [Seminary] funds have not the best management."¹ The central control over this fund was further relinquished in the following year by placing the authority to appoint the seminary trustees in the hands of the several county boards. Each trustee was required to exhibit annually to the county commissioners a detailed account of the seminary funds; but the report to the Speaker of the House was discontinued. Failure or refusal to report to the county board was declared a vacation of the office. At the same time it was made lawful, if the electors so desired,² to choose one trustee from each township of the county. These trustees formed a body corporate and possessed all the powers of the former seminary trustee whom they superseded. They reported to the Circuit Court of the county, which had power to inquire into the management of the funds and to dispose of them as they deemed best. The trustees and their securities were made responsible for any negligent or corrupt waste of the funds.³ The prosecuting attorneys were, in 1825, required⁴ to examine into the situation of the seminary funds and to require officers to account for all moneys which might appear to come into their hands. The prosecuting attorneys were to lay an exhibit of the fund before the Circuit Court; the clerk of the court was required to send a copy of the exhibit to the Speaker of the House of Representatives. The authority of the Circuit Court over this fund was increased in 1831. It was given power to remove any trustee for willful and corrupt official misconduct, and upon the application of the county board to pass any or-

¹ *Message of Governor, House Journ.*, 1823-4, pp. 15-16.

² In 1831 it was provided that electors could not avail themselves of this privilege until this fund amounted to \$400. *Rev. Stat.*, 1831, p. 489.

³ *Rev. Stat.*, 1824, pp. 116-120.

⁴ *Laws*, 1825, pp. 96-7.

ders for the correct disposition of all funds and effects of the seminary of the county as their discretion should direct.¹

Many special laws were enacted during this period, providing various methods of appointing seminary trustees.² By this time there existed on the statute books a complicated system of responsibility and control which was in practice no control at all. The provisions did not give the funds the needed security. We find the Governor, in 1834, saying: "In some instances they are entirely squandered and lost. It is believed at present they are more generally paid over than formerly to the trustees, but there still seems to be some strange fatality attending them."³ He recommended abolishing the office of seminary trustee.

A still greater degree of decentralization was reached in 1833, when it was provided that the "conscience money" might be applied to the support of the common schools, if the person paying so desired. And it may be inferred from the Auditor's report that subsequently most of this money was so expended.⁴

In 1841, the Governor urged that some plan be adopted by which the amount and the management of the county seminary fund might be annually reported to the Legislature.⁵

When the office of Superintendent of Common Schools was created in 1843, some supervision of the affairs of county seminaries was provided, by requiring copies of abstracts of all accounts and statements to be forwarded annually to the county auditor and to the Superintendent of Common

¹ *Rev. Stat.*, 1831, pp. 495.

² *Laws*, 1831-4, pp. 90-2; 1832-3, pp. 137-9; *Rev. Stat.*, 1838, p. 155.

³ *Message of Governor Noble, House Journ.*, 1834-5, p. 19.

⁴ The amount of the militia fine was only one dollar per year, and the sum derived from this source and paid into the State treasury from 1825 to 1847 amounted only to \$634.65. *Rep't of Auditor, Doc. Journ.*, 1847-8, Pt. I, p. 57.

⁵ *Message of Governor*, 1841, *Doc. Journ.*, 1841-2, *House Rep'ts*, pp. 85-6.

Schools, for the use and inspection of the Legislature.¹ Clerks and justices of the peace were required to make reports of fines to the county board at the close of each term of court. The sums collected were to be paid over to the county treasurer at the time and to be loaned by the county auditor, who was responsible for them.² If this source had been properly protected, it would have yielded a generous revenue. But the fines assessed were either remitted by the Governor or, more probably, never paid; at any rate, they were not turned over to the seminary trustees. The Superintendent of Common Schools stated, in 1846,³ that only sixty of the ninety counties had reported and that these returns showed that but thirty-one counties had seminaries erected or in course of completion.

Provision was made, in 1852, for the sale of county seminaries and the transference of the proceeds to the common school fund, after deducting advances made by individuals.⁴ The amount finally turned into the school fund from this source was about \$100,000. The fines for breaches of the peace thereafter were added to the common school fund.

III. *The Delinquent Tax Fund.* The delinquent tax fund, while not the outcome of a well-formulated conviction that the State should support the public schools by a system of taxation, was logically closely related to that principle.

For the purpose of encouraging common schools, it was enacted, in 1832, that lands on which the taxes should remain unpaid for three years should be sold, and the money, including the taxes and the penalty, should be paid to the

¹ *Rev. Stat.*, 1843, pp. 304-5. This was the only control exercised by the State over the secondary schools. They were scarcely different from the private academics.

² *Rev. Stat.*, 1843, pp. 249 and 250.

³ *Rep't Sup't Com. Schools, Doc. Journ.*, 1846-7, Pt. ii, pp. 123-6.

⁴ *Constitution*, art. viii, sect. 2; and *Rev. Stat.*, 1852, i, pp. 437-8.

school commissioner, to be loaned in the same way as the congressional township fund. The school commissioner was required to certify to the Treasurer of State the amount of such lands and the sums paid within each year for their redemption and to submit his books and proceedings to the county commissioner for examination.¹

The Treasurer reported in 1833 but twenty-two counties out of sixty-seven, from which the school commissioners had made returns relative to the delinquent land taxes.² There was no improvement for several years.

Although an attempt at reform was made in 1839,³ its results did not fulfill expectations. In 1842 it was officially declared that only twenty-five counties of the eighty-seven had made any collections on the delinquent lands and lots for seven consecutive years.⁴ In 1843 the proceeds arising from the sale of the lands for delinquent taxes were made part of the general revenues of the county and State.⁵ By virtue of an act of 1853 they were again applied to the common school fund.⁶

The exact amount which was turned over to the school commissioners under these laws cannot be definitely ascertained. It has been estimated at from \$50,000 to \$75,000. The cost of management was considerable, and the remainder was not credited to the school fund, but was expended for current needs; so that the purpose for which it was designed by law was not attained.

¹ *Laws*, 1831-2, pp. 264-5.

² *Rept of Treasurer*, 1833, in *Laws*, 1833-4, p. 382. Two years later he pointed out that the looseness seemed to consist: (1) "In the neglect in some instances of collectors in making proper returns to the school commissioners; (2) in the most culpable neglect on the part of school commissioners in failing to make returns to the Treasurer of State, and (3) in the great imperfection and want of uniformity in such returns as made." *Sen. Journ.*, 1834-5, p. 140.

³ *Laws*, 1838-9, pp. 38-40.

⁴ *Report of Auditor*, 1842, p. 93.

⁵ *Rev. Stat.*, 1843, pp. 219, 224.

⁶ *Laws*, 1853, p. 55.

A few minor funds were created from time to time, such as money lost at gambling and recovered by law when the loser had no near relatives,¹ court fees remaining unclaimed,² forfeitures of recognizances,³ escheated estates,⁴ and proceeds from the sale of estrays after the payment of expenses. The amounts derived from these sources were insignificant, and no special mention of their administration is required here.

IV. *The Saline Fund.* The enabling act of Congress authorizing the formation of a State Constitution, granted to the State all the salt springs within Indiana Territory with the adjacent lands which were necessary for their working. The State Legislature was empowered to prescribe the terms, conditions and regulations of their use with the proviso, that they should never be sold nor leased for a longer period than ten years at a time.⁵

For several years the rents received from these springs and lands were turned into the general fund of the State. Congress, in 1832, granted the State authority to sell these lands on condition that the proceeds should be used for the purpose of education.⁶ The receipts from the sales were paid into the State treasury and were declared to be a permanent fund, the income of which was to be devoted to the common schools.⁷ The moneys were loaned by the State Treasurer, who made an annual report to the General Assembly.

Here was a fund created by the positive act of the State and designed for the use of the whole State, not of certain townships within it. Its management was, therefore, placed directly in the hands of State officers. It was allowed to

¹ *Laws*, 1816-7, p. 94.

² *Laws*, 1841-2, p. 131.

³ *Laws*, 1843, p. 93.

⁴ *Rev. Stat.*, 1843, p. 438.

⁵ *U. S. Statutes at Large*, iii, p. 289.

⁶ *Laws*, 1826-7, p. 103, and *U. S. Statutes*, iv, 558.

⁷ *Laws*, 1832-3, pp. 124-129; 1833-4, pp. 324-6.

accumulate until 1845, when the Legislature ordered its distribution among the counties according to the number of taxable polls. It was to be loaned as other school funds, and the counties were made responsible for its safe keeping and for the payment of the annual interest.¹ The final sales were not made for many years, and the account was at last settled in 1873. The total amount which was turned into the permanent school fund, was about \$85,000. In 1852 it was consolidated with the other funds.

V. *The Surplus Revenue Fund.* The General Assembly in 1837 set apart as a common school fund one-half* of the Surplus Revenue to which the State was entitled under the act of Congress of June 23, 1836.² This, also, was a State fund. It was a notable instance in which the representatives of the people recognized that the school system should be a State system. Although the act imposed upon the Commonwealth no burden of taxation, it was a manifestation of a laudable liberality on its part; for the State had in the previous year authorized the borrowing of \$10,000,000⁴ for the development of internal improvements, and the annual revenue was less than \$65,000.

It is interesting to note the manner in which the State assumed the management of this fund. It was to be apportioned among the several counties in proportion to the number of taxable polls for the year 1836; and every fifth year a new apportionment was to be made on this basis. The Legislature itself was to appoint annually in each county an agent who was to be under a bond filed and recorded with

¹ *Laws*, 1844-5, pp. 60-2. See also pages 45 and 51 above.

² The first two quarterly installments were turned over to the school fund. The fourth installment was never paid, so that two-thirds of the amount actually paid was devoted to the cause of education.

³ *U. S. Statutes*, v, p. 55.

⁴ The State debt in 1837 amounted to \$5,437,000.

the county clerk, a certificate of which was to be sent to the Treasurer of State. The agent was authorized to receive and loan the money under the restrictions and regulations prescribed by the law; and to pay the interest over to the school commissioner, to be paid by him to the several township treasurers. The agent and the school commissioner were required to make quarterly reports directly to the Treasurer of State. It was the duty of the Treasurer of State to report the same annually to the General Assembly and to commence suit against any agent who should fail to comply with the provisions of the act. In case of any such failure or refusal on the part of the agent his authority at once expired.¹

This action seemed to indicate that as soon as the people should come to realize that the common schools were a State institution maintained by a State fund, thereupon the State would assume a stricter control over their finances and their management. The law though sound in theory proved ineffective in practice. In the first report of the Treasurer which contained a reference to this fund, we find him regretting that several of the agents having in charge the loaning of it had neglected to make their quarterly reports. He called attention to the insecurity of the fund, and showed that borrowers were deficient in the payment of interest to the amount of \$3,695—about 12 per cent. of the total income from it.² Notwithstanding the imposition of further penalties,³ the Treasurer reported in 1839 that only thirty out of eighty-four clerks had certified that the loaning agents had given the required bonds; and that many of them had

¹ *Laws*, 1836-7, pp. 3-5, 10.

² *Rep't of Treas. in relation to Surplus Revenue*, 1838, *Doc. Journ.*, 1838-9, pp. 324-5.

³ *Laws*, 1838-9, pp. 30-1.

failed to make reports to his office.¹ In the following years there was little improvement.²

An act of 1841 provided that as the loans already made should be paid off, the surplus revenue fund, the college fund, the State bank school fund, and the saline fund should be gradually invested in the stock of the State Bank of Indiana. But it was left with the several boards of county commissioners to decide whether or not the surplus revenue fund should be so disposed of.³ Only eighteen of the eighty-one counties consented to the investment of the surplus revenue fund in bank stock; ⁴ and only \$1,413 were so invested.⁵

In the following year the power to appoint the loaning agents was transferred to the several boards of county commissioners. It was the duty of these agents to report in full semi-annually to the county auditor, who reported to the county board. The auditor if he thought the fund unsafe, or found any misconduct in the agent, was immediately to cause the county board to convene. It had power to remove the agent, and to hold him or his sureties liable for any losses to the fund. For failure to comply strictly with the law each member of the county board was liable to a fine upon conviction.⁶ But the complaints concerning the management of the fund did not cease.⁷

In 1843 the counties were made liable for the preservation of this fund as well as the congressional township fund.⁸ In

¹ *Doc. Journ.*, 1839-40, *House Rep'ts*, pp. 57-8.

² *Rep't of Treasurer*, 1840, *Doc. Journ.*, 1840-1, *House Rep'ts*, p. 9. *Ibid.*, 1841, *Doc. Journ.*, 1841-2, *House Rep'ts*, pp. 87-8.

³ *Laws*, 1840-1, pp. 192-195.

⁴ *Rep't of Treasurer*, 1841, *Doc. Journ.*, *House Rep'ts*, pp. 88, 106.

⁵ *Sen. Journ.*, 1842-3, p. 155.

⁶ *Laws*, 1841-2, pp. 80-1.

⁷ *Rep't of Auditor*, 1842, *Doc. Journ.*, 1842-3, *House Rep'ts*, pp. 89-93.

⁸ *Rev. Stat.*, 1843, p. 252.

the course of several years a more satisfactory condition prevailed. In 1852 the surplus revenue fund was one of the items which made up the consolidated school fund. The total amount realized from this source was \$567,126.16.

It must, in fairness, be admitted that, upon first appearance, this illustration of financial management under the supervision of the State does not convince one of the superiority of this system over the decentralized local control. But there were several serious defects in the methods tried. There was no power of personal visitation given the State officer. Judicial process was necessary to recover funds or damages from delinquent or corrupt officials, and it was difficult to secure conviction because of personal attachments. There was, until 1843, no liability imposed upon the county as a corporation, holding it responsible for all losses occurring to the school funds. Last and most important, the power of appointing the local officers was misplaced. Instead of intrusting it to a single administrative officer who was responsible for the safe-keeping of the fund, it was granted in the first law to the Legislature, and in a later law to the county commissioners. The appointment of so large a body of local officials by the Legislature meant practically that each member designated the agent or agents within his district. Such appointments, with few exceptions, were made not because of ability and integrity, but on account of personal or party relations. Not much improvement was made when this authority was given to the county commissioners.

VI. *The Bank Tax Fund and the Sinking Fund.* In 1834 the State Bank of Indiana was incorporated with a capital stock of \$1,600,000, one-half of which was owned by the State and the remainder by private citizens. The law stipulated that each share of stock owned by individuals should pay an annual tax of twelve and one-half cents, to be applied

to the school fund.¹ Here was taxation for school purposes, but not general taxation. The burden fell only upon a special class and that a small one, which was considered peculiarly favored by having a monopoly of the banking business in Indiana for twenty-three years. Still it provided for a general State fund which was managed for some time by the State Sinking Fund Commissioners. In 1843 it was paid into the State treasury and loaned by the Auditor of State on real estate mortgages.² Two years later it was distributed to the counties and loaned as other school funds.³ In 1852 it became a part of the common school fund⁴ and added about \$80,000 to the total.

Another provision of the law organizing the State Bank of Indiana proved to be of great financial importance to the public schools. In order to take stock in the State Bank and to make loans to individuals who wished to invest in that institution, it was necessary for the State to borrow money. This loan was to be repaid from the proceeds of a sinking fund, which consisted of the unapplied balances of the loan made to the State, the sums (principal and interest) paid on the loans made by the State to the stockholders, and the dividends or profits received by the State as a stockholder. It was provided that after the payment of the original debt created by the State for this purpose and all expenses, the residue should be a permanent fund and be appropriated to the cause of common schools.⁵ The sinking fund was managed by a board of commissioners, who loaned the money in their charge on real estate mortgages. It was so wisely handled that not even a dollar was lost. In 1841 it was pro-

¹ *Laws*, 1833-4, pp. 15-16.

² *Rev. Stat.*, 1843, p. 248.

³ *Laws*, 1844-5, pp. 60-2. See also page 45 above.

⁴ *Rev. Stat.*, 1852, i, p. 439; *Constitution*, art. viii, sec. 2.

⁵ *Laws*, 1833-4, pp. 35-6.

vided that the funds, as they were paid in by borrowers, should be invested in the stock of the State bank.¹

In 1852 it became a part of the common school fund. In 1859 the General Assembly ordered the distribution of a part of this fund to the counties to be loaned as other school funds.² In 1865 the office of the Sinking Fund Commissioners was abolished and the remainder of the fund was invested in State stocks upon which the State paid interest.³ In 1889 the moneys accruing to this fund were repaid and it was distributed among the counties and loaned as the other school funds.⁴ The amount realized from this source was \$4,255,731, more than 40 per cent. of the entire school fund.

The contrast between the loose, wasteful and fraudulent administration of the congressional township and seminary funds under decentralized control and the honest and efficient management of the sinking fund under centralized control is striking indeed.

VII. *General Taxation and the Consolidation of the School Funds.* The first law which provided for a public school system authorized the raising of funds by local taxation for both tuition and building purposes.⁵ This policy was continued by subsequent legislation. There does not appear to have been any doubt as to the soundness of this principle. It harmonized with the prevailing ideas in respect to self-government. If a district wished to place such a burden upon itself and liked that sort of thing, it was not the business or right of any other part of the State to gainsay it. The State, therefore, granted to local municipal corporations the power of taxation for school purposes. But the support

¹ *Laws*, 1840-1, pp. 192-5.

² *Laws*, 1859, p. 186. See also page 45 above.

³ *Laws*, *Spec. Sess.*, 1865, p. 139.

⁴ *Laws*, 1889, pp. 235-7.

⁵ *Rev. Stat.*, 1824, pp. 379-385.

of schools by general taxation under laws imposing burdens upon all alike, the willing and the unwilling, the rich and the poor, the head of a family and the single man, was quite a different thing. Many years of experience and material development were needed to bring the people of the State to an avowal of that principle.¹

In the general tax law of 1836 were two provisions designed to increase the revenues for school purposes. The tax collectors were directed to pay one-fourth of the poll-tax assessed for State purposes to the treasurer of each congressional township. It was to be distributed to the school districts in the same way as the revenue from congressional township funds.² The other provision directed the county boards to set apart for the encouragement of the common schools five per centum of the gross amount of revenue collected in their respective counties for State purposes. This sum in each county was to be deposited with the school commissioner and by him divided among the several township schools in proportion to the amount of revenue paid by each township.³ Here was a law universal in its extent and mandatory in its character; but the funds derived therefrom were to be expended within the township or county where they were collected. No provision was made for State control over this expenditure or over the schools maintained by the aid of it. This promise of progress towards the support of the district schools by aid from the State revenue was not fulfilled. At the very next session the General Assembly repealed these provisions.⁴ There can be no doubt that the Legislature by this action reflected the popular sentiment.

¹ As early as 1832 Governor Noble recommended appropriating from the State treasury the annual surplus money, apportioning it among the schools that might be supported by tax or contributions six months in the year, leaving it with each Legislature to name the sum to be divided. *House Journal*, 1832-3, p. 19.

² *Laws*, 1835-6, p. 33.

³ *Laws*, 1835-6, p. 34.

⁴ *Laws*, 1836-7, p. 112.

The men who were giving the most earnest consideration to the subject of public schools saw the remedies which were necessary to cure the "system" of its evils. The three chief amendments which they urged were: (1) general taxation for the support of the schools; (2) the distribution of a common school fund by the State according to population; and (3) supervision of the system by a State Superintendent and by county or district¹ superintendents.² As the result of a campaign extending over a decade, these principles were in part incorporated into the Constitution in 1851.

A bill authorizing a general tax for school purposes passed the House in 1848, but failed to become a law. The question seemed too grave to be determined hastily by the legislators alone. Therefore, the General Assembly provided for a popular vote on the question of the enactment of a law by the next Legislature "for raising by taxation an amount which, added to the present school funds, shall be sufficient to support free common schools in all the school districts not less than three nor more than six months in each year."³ The campaign preceding the election was vigorous and even bitter in some localities. "Partisan politics, sectarian bias, the antagonisms of social classes and personal preferences, were all arrayed against the establishment of State, tax-supported schools." "The most vigorous opposition came from the improvident, the needy, the hand-to-mouth laborer, and the ignorant, who most needed the free schools."⁴ The result of the election showed a majority in favor of a

¹ Not school districts, but districts composed of several counties.

² *Rep't Supt. Com. Schools, Doc. Journ.*, 1846-7, Pt. ii, p. 130.

³ *Laws*, 1847-8, p. 48.

⁴ Boone, *op. cit.*, p. 102. It is said that in some places citizens appeared at the polls with arms to intimidate the advocates of free schools. *Indiana School Journal*, 1876, p. 298.

State tax; but the decision was far from unanimous. In fact, thirty-four per cent. of the counties and forty-four per cent. of the electors registered their votes against the proposition. This lack of unanimity, combined with that vague dread of centralization, gave to the legislation of the ensuing session its hesitating and uncertain tone.

The most important provisions of the school law of 1849¹ were contained in the first section, which provided for the increase of the common school revenue by imposing a tax of 10 cents on each \$100 worth of property, a poll tax of 25 cents, and a tax of \$3 on each \$100 of insurance premiums paid in the State to the agents of companies not chartered in Indiana. A special district tax for the purpose of building and furnishing school houses, and a special tuition tax for the purpose of continuing the schools after the public funds had been exhausted, might also be raised by a vote of the qualified electors of the district.² Heretofore the State had contributed a mere pittance to the public schools. The congressional township fund, the surplus fund, and the saline fund were the gifts of a generous national government; the bank tax fund was not yet available; the delinquent tax funds and the contingent funds produced only insignificant sums. If these had not been supplemented by the contributions of public-spirited citizens, the educational facilities would have been even more meagre and inadequate. The assumption of this burden was now actually undertaken by the State. Naturally, it would demand more exact information respecting the extent, the merits and the administration of a system in which it was so much interested financially.

A complete scheme of reports was provided for. Teachers were required to furnish district trustees a full statement of

¹ *Laws*, 1848-9, pp. 123-130.

² *Laws*, 1848-9, pp. 124, 126.

the number of pupils, the average attendance, the length of the school term, the branches taught and the books used. This report with additional information as to the number of children of school age in the district, and the condition of the school house, was certified by the district trustee to the clerk of the board of township trustees, and certified by him to the county auditor with a statement of the township expenditures for tuition and other school expenses. The county auditors in turn reported to the Superintendent of Common Schools the substance of all reports made to them by township clerks, with additional information as to the number of unorganized townships, and the amount and condition of school loans. The Superintendent was to submit a summary of the auditors' reports to the General Assembly. To secure a prompt compliance with these provisions, it was stipulated that no teacher was entitled to his compensation, and no board of township trustees was entitled to its distributive share of the school revenues, until the required reports were made. Further means for securing obedience to these provisions of the law were provided by making county, township or district officers who failed or refused to discharge any of the duties of their offices liable in an action for debt; by making the offices of the township and district trustees obligatory; and by denouncing heavy penalties and fines upon any school officer guilty of embezzlement.¹ Still the imposition of these penalties was left to the local judicial officers, who might be influenced by personal friendship and sympathy. No State officer could even take the initiative by instituting proceedings in the courts. And the subsequent reports of the State Superintendent of Common Schools indicated the partial failure of these provisions.

The basis of the distribution² of the revenues within each

¹ *Laws*, 1848-9, pp. 126-8; sects. 11, 17-21, 23.

² *Laws*, 1848-9, p. 124.

county was the congressional township with its fund derived from the National Government. This has proved a prudent arrangement. In the apportionment of the revenue to the counties, the law contained a fundamental imperfection. It set apart all the school revenues, except the tax upon insurance premiums,¹ for the support of the schools within the respective counties in which they were collected. "This perpetuated one of the most vicious policies to which State schools were ever subjected." "What was a privilege to one [county] was a burden to the other." "There was no State system." "What one section did easily and liberally, another did feebly and badly, or not at all."

The most vital defect of all was in the permissive nature of the whole law. It was not to go into effect in any county, until a majority of the voters of that county at a general election had given their assent to such an increase and extension of the benefits of common schools. If it was rejected, an opportunity to vote upon it was to be given at each succeeding election until it was adopted.² This proviso nullified in forty per cent. of the counties all the advantages which the earlier provisions of the law seemed to guarantee.³ Even in the counties which adopted the law, it failed to command the hearty support of all officers and leading citizens. Many of them looked upon all public schools, "State-founded, State-supported and State-controlled, with teachers having public credentials and civil contracts, as a species of centralization, the usurpation of local rights, the

¹ The tax upon insurance premiums was paid into the State treasury and apportioned by the Treasurer among the counties in proportion to the number of polls therein.

² *Laws*, 1848-9, pp. 130, sect. 31.

³ At the August election in 1849 fifty-four counties gave majorities in favor of the law; twenty-six counties voted against its adoption, and ten counties made no return whatever to the State Superintendent. *Rep't Supt. of Com. Schools*, 1849, *Dec. Journ.*, 1849-50, Pt. II, p. 245.

infringement of personal and family liberties." One opponent summed it up tersely by saying: "The whole State school system is foreign and antagonistic to the American political institutions and traditions."¹

Nevertheless, confidence in a State-supported system of education was growing, and at the first session of the General Assembly under the new Constitution there was almost no opposition to the levying of a tax of ten cents on each \$100 for school purposes. This law corrected the defect in the former method of distribution. The proceeds derived from the tax were to be credited to the general school revenue and to be apportioned among the counties according to the number of children of school age.² The school corporations of cities and townships were granted power to levy by a vote of the electors taxes for building purposes and for the support of the schools after the State school revenues had been exhausted.³

The distribution of the revenues in proportion to the children of school age was an unpopular innovation. There was opposition, because the revenues raised under the State levy for school tuition were not expended exclusively within the counties in which they were obtained; because the older and richer counties paid more school tax in proportion to the number of their children than the newer and poorer counties; and because some people objected to paying taxes in any form for the support of education.⁴

The enforcement of the law was resisted and its constitutionality contested on other grounds. The result was that within four years the law was emasculated by the decisions of the Supreme Court. It was held that township taxes must

¹ Quoted by Boone, *op. cit.*, p. 122.

² *Rev. Stat.*, 1852, p. 443.

³ *Ibid.*, pp. 442, 444.

⁴ *Second An. Rept Supt. Pub. Instr.*, 1853, p. 24.

be levied by the trustees and not by a popular vote, and this provision was, therefore, unconstitutional. The whole clause authorizing a local tax for tuition, even when assessed by the township trustees, was also declared unconstitutional. The Supreme Court said that this provision, if constitutional, would destroy the uniformity of the common school system. "The power of controlling schools would necessarily, to a great extent, pass from the State and the Superintendent into the hands of the local authorities of the different townships." "It was evidently the intention of the framers of the constitution to place the common school system under the direct control and supervision of the State, and make it a *quasi* department of the State government." "Common schools are thus established as a State institution, under the Superintendent of Public Instruction as its official head, and to be supported as to tuition by State funds." Taxes for State purposes could not be levied by local and special laws, but only upon a uniform and equal rate of assessment and taxation. The section permitting local taxation violated this restriction, for it was not a State tax, but specific and local, levied by vote for the support of a part of the common school system.¹

This decision seems narrow and inconsistent with the spirit of the new Constitution. Here was the opposite extreme. Under the old system no support was given by general taxation. By this interpretation all revenue for tuition must be levied by the State by a general tax and could not be supplemented by local taxation. The General Assembly, in 1855,² revised the school law to make it harmonize with the

¹Greencastle Township (Putnam County) *et al. v. Black*, 5 *Ind. Rep'ts*, pp. 563-5, 571-3. A similar law authorizing local taxation for tuition purposes in towns and cities was declared unconstitutional by the Supreme Court. *City of LaFayette v. Jenners*, 10 *Ind. Rep'ts*, p. 76.

²*Laws*, 1855, p. 162.

decisions of the courts. One result of these judicial decisions was to leave to the State the exclusive provision of tuition revenue (except that arising from congressional township funds), and to the school corporations the exclusive provision of building funds.

To secure to townships the exclusive use of the income from the congressional township fund, it was provided that the State Superintendent should make the annual apportionment of the income from the common school fund and from school taxes to the counties "according to the enumeration of scholars therein, without taking into consideration the congressional township fund in such distribution." In making the distribution within the county, the auditor was "to ascertain the amount of the congressional township fund belonging to each city, town and township," and to "so apportion the income of the common school fund as to equalize the amount of available funds in each city, town and township" as near as might be, according to the number of scholars therein, provided that in no case the income of the congressional township fund belonging to any congressional township should be diminished by such distribution and diverted to any other township.¹ The constitutionality of this law was sustained, the court holding that the State had power, by virtue of her sovereignty, so to discriminate between the townships already provided with school funds and those which had none, as to place them upon an equality.²

The reports of township trustees, in the first years under the law of 1852, were very incomplete and were regarded by the State Superintendent as "so imperfect and unsatisfactory as to be wholly useless for publication."³ With the object

¹ *Lewis*, 1855, pp. 175-6.

² *Quick et al v. Springfield Township*, 7 *Ind. Reports*, p. 636.

³ *An. Rep't Supt. Pub. Instr. for 1853*, p. 28.

of securing greater promptness and accuracy in the reports, amendments were made in 1855. County Commissioners were required to examine the accounts, and proceedings of county treasurers and auditors in relation to the distribution of the school fund.¹ This law was designed to prevent any misuse or diversions of funds after the distribution had been made. Township trustees were required to make their reports to the county auditor, who was to report to the State Superintendent of Public Instruction.² This arrangement tended to prevent many mistakes and much delay; to furnish better opportunities to secure prompt, full and reliable statistics; and to arouse careless and indolent officials to action. There were complaints still, of delays and failures to report, and even of the loss of loans.³ It was felt that further protection of the funds and revenues was necessary. The law of 1861 sought to secure this.

The Superintendent of Public Instruction was given power at any time, when he should discover from the reports any deficit, to direct the attention of the board of county commissioners and the county auditor to the fact. The board was thereby authorized and required to make good such deficit.⁴ It was also made the duty of the State Superintendent to visit each county annually, for the purpose of examining the auditor's books and records relative to the school funds and revenues; and to cause suits to be instituted in the name of the State for the recovery of any portion of these trusts.⁵ Provision was made for the closer examination of the books and accounts of auditors and treas-

¹ *Laws*, 1855, p. 173.

² *Ibid.*, p. 166.

³ *Rep't Supt. Pub. Instr. for 1860, Doc. Jour.*, 1860-1, pt. ii, p. 321-331; *Ibid.*, for 1863-4, *Doc. Journ.*, Pt. i, p. 39. From 1842 to 1860 about \$32,000 were lost.

⁴ *Laws, Reg. Sess.*, 1861, p. 69.

⁵ *Ibid.*, pp. 91-97.

urers by the county board, and for more elaborate reports from the latter to the State Superintendent and Auditor of State. County commissioners were given power to remove any trustee guilty of fraud.¹ The law attempted to insure greater accuracy and promptness in the matter of reports. For the failure of any teacher to report to the trustees, twenty-five per cent. of his salary was to be withheld. For the failure of the trustee to report to the school examiner, the township was to suffer a diminution of \$25 of its share of the school revenue, which was to be withheld by the county auditor; the trustee was made liable on his bond for the amount of such reduction and also subject to an action against him by any person in the name of the State for the recovery of any sum not exceeding \$10 for the use of the county. On failure of any county auditor to make to the State Superintendent his report in time for the semi-annual apportionment, his county was subjected to a diminution of \$100 in the next apportionment of revenue by the State Superintendent. The sum thus withheld could be collected from the auditor in a suit before a justice of the peace, prosecuted in the name of the State by any person living in the county who had children enumerated and who was aggrieved.² A similar penalty was imposed upon the examiner for failure to make his reports.³

Four years later, in order to obtain accurate information as to the exact amount and condition of the school funds, auditors were required to make a special examination of the records relating to the common school and congressional township funds, and to report the amounts ascertained to the boards of commissioners of their respective counties for their approval. The county commissioners after approving and recording the returns in their books were to forward a

¹ *Laws, Reg. Sess.*, 1861, pp. 87, 95.

² *Ibid.*, pp. 73, 74, 89.

³ *Ibid.*, p. 79.

certified copy to the Superintendent of Public Instruction for his approval. If approved by him, the amounts were to be recorded in his office and the county auditors were to be so notified; and thereafter such statements were to be regarded as conclusive evidence of the facts contained therein.¹

The law² establishing the office of county superintendent and conferring upon him power to examine the records of officers who handle school moneys, and to institute suits if necessary, has had a good effect. In the first report of the State Superintendent after the passage of the law, he showed that the county superintendents had actually saved in 77 counties \$52,472 delinquent moneys for the school fund. Other sums would have been lost "if officers had not known that the county superintendent was at their backs, and would speedily discover their delinquency and expose them."³

This practically ends the struggle to secure satisfactory information respecting the school finances and to impose a reasonable control over their administration. Since 1861 complaints on account of delayed, inaccurate or incomplete reports have grown less and less frequent; and since 1868 there have been almost none.

The great obstacle, however, in the way of the progress of the schools was the lack of adequate revenue. This was pointed out by every Superintendent of Public Instruction for a dozen years. The Legislature had, in 1865, increased the State levy for school purposes to sixteen cents;⁴ but what was needed was the supplementary local taxation, which had been declared unconstitutional in 1854. In 1867,

¹ *Laws, Spec. Sess.* 1865, p. 144. Some special acts were afterwards passed changing the statements of certain counties because of the discovery of new facts.

² *Laws*, 1873, p. 789.

³ *Bien. Rep't Supt. Pub. Instr.*, 1873-4, p. 29.

⁴ *Laws, Reg. Sess.*, 1865, p. 5.

relying upon a change in public sentiment and in the attitude of the judiciary, a bold step was taken, which was nothing less than the re-enactment of the discarded law of 1852. The trustees of civil townships and of incorporated towns and the common councils of cities were empowered to levy annually a tax, the proceeds of which were to be kept by the same officers and applied and expended in the same manner as funds rising from taxation for common school purposes by the law of the State.¹ The constitutionality of this law remained unassailed for eighteen years and then was upheld by the Supreme Court.* In 1873, the first year in which the taxes under this law were available, \$530,668 were added to the tuition fund. For the year 1900 the amount derived from the local tuition tax was \$2,684,914, almost 50 per cent. of the total tuition revenue. The rapid increase in the amount of the local tuition revenue was the chief argument advanced to secure a reduction of the State levy to thirteen and one-half cents in 1893³ and to eleven cents in 1895.⁴ It is believed that Indiana has found a happy solution of the school revenue question. Dependence solely upon local revenue would lead to inequality of school privileges and retrogression in the poorer communities. Reliance entirely upon State support would invite local indifference and extravagance and lead to increased expenditures by the State. A proper combination of State and local support secures all the advantages with none of the evils of the two systems.

In reviewing the financial phases of the school history, it has been noticed that as the State has assumed more and more the burden of maintaining the schools, the accountability exacted from school officers has become stricter knowledge as to the scope and methods of instruction has

¹ *Laws*, 1867, pp. 30-1.

² *Schenck v. Robinson*, 102 *Ind. Rep'ts*, p. 307.

³ *Laws*, 1893, p. 182.

⁴ *Ibid.*, 1895, p. 299.

grown more accurate, greater permanence has resulted, and a nearer approach to uniformity and universality has been made.

4. SCHOOL SUPERVISION.

I. *The Establishment of the Agencies of Supervision.* The evolution of State supervision can best be presented by following the development which has been made along the separate lines of centralization. This section will attempt to present the conditions which led to the establishment of the agencies of supervision, and subsequent sections will show the later development and results of their authority.

(a) *The State Superintendent of Public Instruction.* Under the law of 1824, which inaugurated the school system, there was no thought of providing any systematic supervision of school finances or organization. No township trustee, sub-trustee nor any other officer was given authority to visit the schools or to inspect them, in order to ascertain whether or how the teacher was performing his contract; and it was many years before any such control was exercised.

As early as 1833 a bill was passed by the Senate¹ providing for the establishment of a Board of Education for the encouragement of common schools; but it was rejected by the House.²

The first evidence of any broad conception of this need of the schools is found in the report of Hon. John Dumont. It presents so forcibly the value of intelligent supervision as a remedy for the existing conditions that one is justified in quoting him at length. "There is," he says, "no important concern of our State Government left without supervisory authority to watch and direct its operations, the primary

¹ *Sen. Journ.*, 1833-4, pp. 181, 209.

² *House Journ.*, 1833-4, p. 415.

schools alone excepted. . . . The people have been left to struggle and grope their way without guides, without direction, without cheering from the constituted authorities. No general plan has been laid before them. No visitors have been appointed. Impositions are continually practiced upon districts and sometimes upon whole townships, by which all the bounty of Congress and of the State is drained from the people and put into the pockets of ignorant pretenders." To remedy these evils he suggested that the State should be laid out in large districts, and that a suitable person in each should be appointed, to visit each county at least once a year; to examine the county seminaries; to inquire into the manner in which school commissioners and other officers kept their books and performed their duties; to visit the district schools; to receive from the several officers detailed reports of all school matters connected with the districts, townships and counties; and to grant certificates to teachers upon satisfactory examinations. He further recommended that the several visitors should constitute a State Board of Common School Education, which should meet annually, report to the Legislature the result of the examinations and recommend amendments to the school laws. The Board should also devise and recommend from time to time the mode of instruction and the books and apparatus to be used in county seminaries and district schools, leaving it optional with the trustees respectively to adopt the suggestions. As results of such a "visitatorial system," Mr. Dumont anticipated that the importance of the instruction of their children would be impressed upon the minds of parents; that neighborhood feuds and private strifes would in a degree vanish; and that the united efforts of almost every district might soon be expected. "A competent class of teachers," he goes on to say, "will succeed those who are now totally unqualified for their stations. The whole swarm of worth-

less teachers who are now preying on the inhabitants, will be driven from the State, or be compelled to seek other employments. An emulation will arise among the teachers; . . . a personal emulation and a district pride will pervade the breasts of the children; parental love and parental pride will be enlisted, and then, the whole grand work will have received such an impetus as to bid defiance to all obstacles." ¹

Notwithstanding this enthusiastic plea and subsequent recommendations² to that effect, centralized supervision was not attempted until 1843. The important law³ of that year conferring upon the Treasurer of State the functions of a Superintendent of Common Schools has already been mentioned.⁴ While his duties pertained chiefly to financial and statistical matters, he had authority to hear appeals in certain cases and to render final decisions thereon.⁵ Besides, he was required to communicate to the Legislature plans for the better organization of the common schools and all matters relating to the cause of education which he should deem expedient. Here was a discretionary authority which might have been elaborately developed. But this was not done, because the Treasurer had neither the time nor the professional knowledge to apply to the task, which was merely incidental to his office.

The Superintendent of Common Schools in his first annual report expressed the regret that he had so little to communicate on that important subject. He showed that according to the U. S. census of 1840, there were 1,521

¹ *Sen. Journ.*, 1836-7, pp. 181-5. A bill embodying these suggestions, though somewhat modified in detail, was reported by the committee on education in the Senate, but was rejected by a vote of 15 to 27. *Ibid.*, pp. 377 and 413-415.

² *House Journ.*, 1838-9, pp. 414-427; 1839-40, p. 26.

³ *Rev. Stat.*, 1843, pp. 323-5.

⁴ Pages 44-45 above.

⁵ This appellate jurisdiction was taken away in 1847. *Laws*, 1846-7, pp. 118-9.

primary and common schools, affording instruction to 48,189 pupils out of the 273,784 children between the ages of five and twenty years then in the State. "But in regard to the course and extent of instruction, the expense of the same, the number of teachers employed, the amount and application of school funds, and other subjects necessary to a proper understanding of the subject, and to the application of successful legislation, we are entirely ignorant."¹ Two years later² the Superintendent of Common Schools again referred to the incomplete returns made to his office. Though there was "want of a regular system of instruction, of government and discipline in the schools," he was led by information furnished by county auditors and others to believe that the subject of education, though slowly, was gradually improving. He recommended that some person other than the Treasurer of State should be selected as the Superintendent.³

The campaign of education conducted by the advocates of State supervision during the decade from 1840 to 1850⁴ so enlightened public opinion that, in spite of some opposition in the Constitutional Convention of 1850-1, a clause was inserted in the Fundamental Law⁵ creating the office of Superintendent of Public Instruction. The Legislature of 1852 provided for his biennial election, prescribed his duties, and established a State Board of Education. It was the duty of the Superintendent to present to the General Assembly or to the Governor, when the Legislature was not in session, an

¹ *Report of the Supt. of Com. Schools for 1843, in Doc. Journ., 1843-4, House Reports, p. 327.*

² *Report of Supt. of Com. Schools for 1845, Doc. Journ., 1845-6, pt. ii, p. 103-5,*

³ This recommendation was repeated in nearly every subsequent report, and was also urged in the messages of governors.

⁴ See pages 34-36, 63 above.

⁵ *Constitution, art. viii, sec. 8.*

annual¹ report giving an exhibit of his labors, the results of his experience and observations, suggestions for the improvement of the system, and statistical tables prepared from the materials transmitted to his office; to visit ten days annually in each congressional district² superintending institutes, giving counsel to trustees and teachers, and delivering lectures; to submit to the State Board a list of text-books for their inspection and approval; to superintend the purchase of township libraries; to hear and determine appeals from township trustees, and to guard the safety and security of educational funds. He had authority to prepare all blank forms for his office and to require information from all local school officials. He was, either by himself or by a deputy, to examine all applicants for license and to grant certificates for one or two years; such licenses could be revoked by him if the teacher proved incompetent.³

For a few years immediately after the establishment of the office, the reports of the State Superintendent of Public Instruction were unsatisfactory. This state of affairs was due in part to the discrepancies between the new school law and the new law organizing the civil townships,⁴ and in part to the incapacity or indifference of local officials.⁵ Subsequent laws corrected these complexities and increased the penalties for failure to comply with the legal requirements.⁶ The gradual development of the powers and influence of the State Superintendent of Public Instruction will be traced in subsequent pages.

¹ Biennial reports in place of annual reports were required in 1861. *Laws, Reg. Sess.*, 1861, p. 97.

² Modified in 1855 by requiring him to spend annually on an average at least one day in each county. *Laws*, 1855, p. 178.

³ *Rev. Stat.*, 1852, i, pp. 448-450.

⁴ *Rep't State Supt. Pub. Instr.*, 1853, p. 27.

⁵ *Ibid.*, 1858; *Doc. Journ.*, 1858-9, pt. ii, p. 297.

⁶ *Laws*, 1855, p. 173; *Reg. Sess.*, 1861, pp. 69-74, 89-97.

(b) *The State Board of Education.* The State Board of Education, according to the Act of 1852, consisted of the State Superintendent of Public Instruction, the Governor, the Secretary, the Treasurer and the Auditor of State. They were required to meet annually at Indianapolis "for the purpose of more effectually promoting the interests of education by mutual conference, interchange of views and experience of the practical operation of the system, the introduction of uniform school books, . . . and the discussion and determination of such questions as may arise in the practical administration of the school system."¹ Criticism against the composition of the Board may be in part forestalled by stating that the most urgent need at that time was the proper administration and preservation of school funds and revenues. Few persons were more competent to give advice upon this subject than those officers enumerated above. Three years later, in order to give them a capable legal adviser, the Attorney General was added to their number.² Aside from their advisory functions in regard to legal and financial matters, they were chiefly concerned with the recommendation of text-books, and the selection of books for township libraries.

In the course of a few years the legal and financial questions were in the main disposed of and new problems of a technical nature were demanding solution. It was then felt that the efficiency of the Board would be increased by a change in its composition. In 1865 it was made to consist of the Governor, the State Superintendent of Public Instruction, the President of the State University, the President of the State Normal School, and the Superintendent of common schools of the three largest³ cities in the State.⁴ Up to this

¹ *Rev. Stat.*, 1852, i, p. 457.

² *Laws*, 1855, p. 183.

³ The size of cities for this purpose was and is determined by the school enumeration.

⁴ *Laws, Reg. Sess.*, 1865, pp. 33-4. In 1875, the President of Purdue University was added to the Board. *Laws, Reg. Sess.*, 1875, pp. 130-1.

time the Board had contained but one member, the State Superintendent of Public Instruction, who might be regarded as an expert in educational affairs. The substitution of a board of professional men for one composed of *ex-officio* members charged with prior and paramount responsibilities, proved to be a wise departure. Without any disparagement of the ability or service of the former members, it may be said that with this change begins that influence which has shaped the educational policy of the State for thirty-five years.

In 1899, in answer to the demand that the district schools and the non-State colleges should have more immediate representation on the State Board of Education, there were added to it three other members.¹

(c) *The County Superintendent.* As early as 1834 the office of examiner had been created. The duty of this officer, as the name indicates, was to pass upon the qualifications of teachers.

At the time of the establishment of the State Superintendency, the board of township trustees were required to "visit schools, either as a board or by one of their number, at least twice during each term," for the purpose of examining "the mode of teaching, government, books used, adaptation of school-houses and furniture, the comfort and health of the scholars, condition of such school-houses and furniture, and all matters connected with the comfort and efficiency of the schools."² As such supervision was merely perfunctory and non-professional, it was of little value. It was soon realized that there was a serious defect in the system which was due to the "strange and inconsistent hiatus between the township trustees and the State Superintendent." The latter advised the creation of ten subordinate superintendents,

¹ *Laws*, 1899, p. 426-7. See also below, ch. 1, sec. 5, ii (b).

² *Rev. Stat.*, 1852, i, pp. 440, 442.

"coadjutors of the State Superintendent," whose duty it should be to visit each township annually, to supervise schools, address the pupils and teachers, hold teachers' institutes and stimulate the educational life of the community.

It seemed more feasible to expand the authority of the examiners, and to give them supervisory and administrative powers. A beginning in this direction was made in 1861. The number of examiners in each county was reduced from three to one, who received his appointment from the board of county commissioners for a term of three years. Besides his authority to grant licenses to teachers, he² was required to make the annual statistical reports to the State Superintendent and to the county auditor; to hear appeals from the decisions of trustees and render decisions which were final in all local questions; to act as a "medium of communication between the Superintendent of Public Instruction and the subordinate school officers and schools;" to visit the schools of his county as often as he might deem it necessary for the purpose of increasing their usefulness and elevating, as far as practicable, the poorer schools to the standard of the best; to advise and secure, as far as practicable, "uniformity in their organization and management, and their conformity to the law and the regulations and instructions of the State Board of Education and Superintendent of Public Instruction;" to encourage teachers' institutes and associations; and to advise the trustees as to the most approved school furniture, apparatus, and educational agencies.³ In the visitatorial and advisory functions of the office, there seemed great possibilities. The law was at first eminently satisfactory to teachers and officers. The greater care in

¹ *Rept. State Supt. Pub. Instr.*, 1854, *Doc. Journ.*, 1854-5, pp. 734-5.

² In place of the county auditor.

³ *Laws, Reg. Sess.*, 1861, pp. 78-9.

licensing teachers, the extensive visiting of the schools and the advising with trustees, directors and teachers tended to elevate the character of the schools.¹ "The examinations were fairer; the grade of teachers had been improved; better texts were used; trustees showed a more intelligent interest in the schools; institutes grew in favor, the State's knowledge of her system through statistical reports became more complete and trustworthy, and altogether the office had more than justified its existence."²

While this was true in the best counties, in others the law was poorly, if at all, enforced. Examiners could not afford to visit schools for the compensation³ which they were authorized by law to receive; hence, competent men refused the office.⁴ Many examiners did not deem it necessary, but occupied their time in teaching, in the practice of law or medicine, or in following some other vocation.⁵ The teachers in the rural districts were not only independent of each other, but, in a large degree, independent of any directing head. Each teacher did whatever seemed best to him; there was no unity in classification, course of study, text-books, methods of instruction or discipline. It was the almost unanimous conclusion among educators in Indiana that the "one thing needful" in the school system was to extend the powers, duties and compensation of the school examiner, and thus establish a greater degree of local and State centralization.⁶ This reform was effected in 1873, by the creation of the office of county superintendent.⁷

The difference between the legal duties of the county

¹ *Bien. Rep't, State Supt. Pub. Instr.*, 1863-4, *Doc. Journ.*, pt. i, p. 54.

² Boone, *op. cit.*, 245.

³ Three dollars per day.

⁴ *Bien. Rep't Supt.* Hobbs, 1869-70, pp. 55-6.

⁵ *Bien. Rep't State Supt. Pub. Instr.*, 1873-4, p. 25.

⁶ *Bien. Rep't Supt.* Hopkins, 1871-2, pp. 53, 88, 153.

⁷ *Laws*, 1873, p. 75-9. He was elected bi-ennially by the township trustees.

superintendent and those of the county examiner does not seem great, but in practice it was. County examiners had been required to visit only when they deemed it necessary; county commissioners could limit the number of days spent in visiting and in the performance of other duties. Indeed, very little visiting was done.¹ "The truth is that we have had county superintendency in Indiana for more than twenty-five years, the chief difference between the present and the former system being that the one provides for efficient supervision, while the other did not."²

There was, however, some dissatisfaction at the increased centralization, which attempted to conceal itself under a pretended apprehension of expense and extravagance. As a consequence of this opposition, the compensation of the county superintendent was diminished and the number of days which commissioners might allow for visiting schools was reduced one-half.³ These changes seriously weakened the system, as they made it unprofitable in many counties for a competent man to accept the office. Since then this defect has been remedied.

In 1873 the State Superintendent succeeded in obtaining a convention of the county superintendents for the purpose of discussing the nature and needs of their work. These meetings have been held annually since then and have exerted a most beneficial influence upon the graded schools.

Recommendations were made from time to time by State Superintendents, associations of teachers and of county superintendents, and by legislative committees as to the powers of the county superintendent, his tenure of office, his qualifications, his salary, and the method of his selection. But no material change was made between 1875 and 1899.

¹ *Bien. Rep't State Supt. Pub. Instr.*, 1873-4, p. 25.

² *Bien. Rep't State Supt. Smart*, 1875-6, p. 91.

³ *Laws, Reg. Sess.*, 1875, pp. 133.

The term of office was then increased to four years. The possession of a thirty-six months' license or a life or professional license to teach was made an essential qualification for the office.

The value of the more intimate connection with the internal administration of the schools and institutes can not be definitely measured, but in the estimation of educators it has been very great. Superintendent Bloss summarized it concisely by saying, that "superintendence means suggestions to teachers as to better methods of discipline and of imparting instruction, better observance of laws of health in school rooms, better gradation of schools, better programs for the employment of time; suggestions to trustees as to better care of school-houses, grounds, furniture, apparatus, and much more."¹

(d) *The County Board of Education.* The Legislature of 1873 also provided for the greater local centralization and a more harmonious co-operation of the various school corporations within the county by creating a county board of education. It was composed of the county superintendent, the township trustees, and the school trustees of the towns and cities of each county.² The duties of the county board were to consider the wants and needs of the schools and school property and all matters relative to the purchase of school furniture, books, maps, etc.; to supervise the care and management of township libraries, and (except in cities) to adopt text books.³ By virtue of the law of 1889, their authority over the adoption of text-books is restricted to the township high schools.⁴ Their discussions "have

¹ *Bien. Rep't State Supt. Pub. Instr.*, 1881-2, p. 149.

² The towns or cities were represented by the chairmen of their respective boards of trustees in 1877. *Laws, Reg. Sess.*, 1877, p. 122.

³ *Laws*, 1873, pp. 78-9.

⁴ See below, ch. i, sec. 4, iv.

aided materially in arousing a spirit of emulation among township trustees in all matters pertaining to school work."

(e) *The City Superintendent.* The necessity of organization and classification was felt keenly in the cities, where large numbers of pupils were gathered together in the schools. During the period before any legal provision was made for the supervision of city schools, this function was either performed by some *ex officio* officer or neglected entirely. It was not until 1871 that the city of Indianapolis was authorized by law to employ a city superintendent.² In 1873 this authority was extended to all cities and towns.³

II. *The Licensing of Teachers.* From the first attempt to establish a school system, it was recognized in theory that some special test of the fitness of teachers should be required. The law of 1824 gave the sub-trustees of the school district authority to employ a teacher, who was required "to produce the certificate of the township trustees that they have examined him touching his qualifications and particularly as respects his knowledge of the English language [reading and spelling], writing and arithmetic."⁴ Although this provision was mandatory, the practical operations of the law could scarcely be called a test. The officers who passed upon the qualifications of teachers seldom had qualifications sufficient to apply the law. Incapacity to earn a living in any other way seemed often the chief recommendation of the teacher. State Superintendent B. C. Hobbs said: "The pioneer teachers were generally adventurers from the East or from England, Scotland or Ireland, who sought temporary employment

¹ *Bien. Rep't State Supt.* Geeting, 1895-6, p. 435.

² *Laws*, 1871, p. 20 ff.

³ *Laws*, 1873, p. 68 ff, sec. 12.

⁴ *Rev. Stat.*, 1824, p. 384. Repeated in 1831. *Rev. Stat.*, p. 476.

* * * * or men unsuccessful in trade, or who were lame or otherwise disabled.¹

In 1833 it was provided that no teacher should be employed unless he should "sustain a satisfactory examination before the district trustees, touching his ability to teach reading, writing and arithmetic."² An effort was made in 1834 to give to the examination a more professional nature. The Circuit Court was given power to appoint annually for each county three examiners, whose duty it was "to certify the branches of learning each applicant was qualified to teach." Their authority was not final; for they were "only an auxiliary to aid" the district trustees, who still possessed the right to examine the teachers.³ In other words, a teacher holding a certificate of qualification from the examiners might be refused employment if he had not been examined and approved by the district trustees. A few years later trustees were forbidden to employ any teacher who did not hold a certificate granted by one of the examiners; but the district trustee enjoyed the privilege of subjecting the applicant to further inquiries, to ascertain whether or not he was of good moral character.⁴ The following year it was made optional with the district trustees to require any teacher asking for employment to procure a certificate from the school examiners, stating the branches which he was qualified to teach.

In spite of this reactionary provision, there was a growing conviction that the improvement of the schools was dependent upon the elevation of the teacher's calling to the rank of a profession by requiring of him the possession of higher ability, more thorough preparation and finer character. The personnel of the teaching corps was gradually improving.

¹ Quoted in Dr. J. A. Woodburn's "*Higher Education in Indiana*," p. 44.

² *Laws*, 1832-3, p. 99.

³ *Laws*, 1833-4, p. 328. ⁴ *Laws*, 1839-40, p. 35. ⁵ *Laws*, 1840-1, p. 86.

However, it is not to be supposed that in all sections the law was enforced with uniformity and impartiality. Often it was necessary to lower the standard in order to secure any one who was willing to accept the meagre compensation offered.

The law of 1843 designating the Treasurer of State Superintendent of Common Schools instituted no connection between that officer and the county examiners, and required no report from them. The lack of system and uniformity is well illustrated by the special laws for sixteen different counties, permitting their boards of county commissioners to appoint one or more persons in each civil township of their respective counties as examiners of common school teachers.¹

In 1847 the standard was raised somewhat by the requirement that teachers should be qualified to teach orthography, reading, writing, arithmetic, English grammar and geography; but the last two requirements might be waived by a request of a majority of the voters at a district meeting.² Four years later a still greater concession to the wishes of individual neighborhoods was given, by making it lawful for a majority of the voters at a school district meeting to dispense with such legal qualifications of school teachers as they might deem proper.³

In 1852 a decided step towards centralization was taken. The office of examiner was abolished and the State Superintendent of Public Instruction was given power, either by himself or his deputy,⁴ to examine all applicants for license and to grant certificates for one or two years. Such licenses could be revoked by him if the teachers should prove incom-

¹ *Local Laws*, 1844-5, p. 149; *Special Laws*, 1845-6, p. 230.

² *Laws*, 1846-7, p. 118.

³ *Laws*, 1850-1, p. 167.

⁴ He was authorized to appoint one deputy in each county.

petent. No officer could employ a teacher who had not procured a license.¹ The law did not require the deputy to use questions prepared by the State Superintendent, and but few deputies were appointed under this act.²

There is little doubt that this centralization of authority was unpopular, for in the next year the office of county examiner³ was revived. The examiners were required to forward an annual report to the State Superintendent, showing the dates of issuance and expiration of all licenses granted to them. The terms varied from three to twenty-four months. The State Superintendent still had authority to license teachers at his pleasure. As this law⁴ applied to all counties and districts without exception, it assured a greater degree of uniformity. At the same time, its flexibility made it adaptable to the needs of all communities and thus, in a measure, silenced objections. The purpose of having a graduated scale was to set a high standard of qualification at which all persons proposing to teach should aim, and at the same time to provide for the existing emergencies, owing to the scarcity of teachers, by authorizing a short-term license to persons who might not be able to pass a rigid examination. From the subsequent reports of examiners, this seemed a wise and necessary expedient.⁵

The regulation of the issuing of teachers' licenses was far from satisfactory. A license granted in one county under a lenient examiner was legal in any other county where a more exacting test was required. There was no authority for the revocation of a license issued by an examiner. There were serious charges of partiality where private examinations were permitted. There was no uniform standard in the

¹ *Rev. Stat.*, 1852, pp. 450, 454.

² Boone, *op. cit.*, 242.

³ From one to three in each county.

⁴ *Laws*, 1853, pp. 124-6.

⁵ *Second Annual Report State Supt. Pub. Instr.* (1853), pp. 12, 201-214.

examinations even within a single county. "He who was most lenient and superficial was most patronized. A teacher failing to pass with one examiner frequently applied to another and received a license."¹ With the increase of the powers and duties of the examiners in 1861,² there went a corresponding centralization of authority over examinations. Licenses were limited in their authority to the county in which they were issued. The examiner was required to report to the State Superintendent the names of the persons to whom he had granted licenses.³ He had discretion to omit from the test any of the six required branches⁴ if requested to do so by the proper trustee. The mischievous effects of this clause were abated by the proviso, that such a license should be limited to the particular school in which the holder wished to teach, could not exceed six months, and could not be repeated to the same person. He had power to revoke licenses for incompetency, immorality, cruelty or general neglect of school business, the defendant having the right to appeal to the State Superintendent. That officer still had authority to issue licenses at pleasure and could revoke certificates which he had granted.⁵ These changes resulted in the elevation of the standard of the scholarship of the teachers at least fifty per cent. In some quarters there were at first considerable feeling and opposition, but in a short time the law proved eminently satisfactory to teachers and school officers alike.⁶ The State Superintendent expressed the belief that but few "special" or "limited" licenses were issued.⁷

¹ *Rep't State Supt. Fletcher for 1861, Doc. Journ., 1862-3, pt. ii. vol. i, p. 160.*

² See p. 81-82 above.

³ *Laws, Reg. Sess., 1861, pp. 76-7.*

⁴ Orthography, reading, writing, geography, arithmetic and English grammar.

⁵ *Laws, Reg. Sess., 1861, pp. 78-9, 93.*

⁶ *Rep't of State Supt. Fletcher for 1861, Doc. Journ. 1862-3, pt. ii, vol. i, p. 160*

⁷ *Rep't State Supt. Pub. Instr. for 1862, p. 10.*

A tendency in the opposite direction was shown in the law enacted in 1865. It provided that if the school meeting should designate the teaching of other subjects or a less number of branches than those required by law, the teacher was to be examined in only those branches.¹ This change received the almost universal disapproval of teachers and examiners;² and the provision was in a short time repealed.

The practical questions of the best methods to raise the standard of qualification and to provide for the issuing of licenses were annually discussed by school officials and associations of teachers and of school officers. There was a feeling that suitable provision should be made for the issuing of a teacher's license that should be good in any part of the State and for the lifetime of the holder. The difficulty of finding a suitable board to conduct the examination was solved satisfactorily in 1865, by giving the State Board of Education power to grant "State Certificates of Qualification to such teachers as may, upon a thorough and critical examination, be found to possess eminent scholarship and professional ability and shall furnish satisfactory evidence of good moral character." Such a certificate entitled the holder to teach in any school of the State without further examination, and was valid during the lifetime of the holder.³ The law very wisely left much to the wisdom and discretion of the Board, who prescribed the conditions upon which State certificates should be issued.

In the local examination of teachers there was great diversity. Each of the ninety-two examiners fixed the

¹ *Laws, Spec. Sess.*, 1865, p. 143.

² *Bien. Rep't State Supt. Pub. Instr.*, 1865-6, *Doc. Journ.*, pt. i, p. 321.

³ *Laws, Reg. Sess.*, 1865, pp. 33-4. In 1883 the same board was authorized to grant "professional licenses," which were good in any county of the state for a period of eight years. *Laws*, 1883, pp. 130-1.

standard for his own county; hence no common standard prevailed throughout the State. In some instances the questions were provokingly difficult; in others they were puerile. In 1871 the State Board of Education took a new departure by preparing a series of twelve sets of examination questions upon the branches required to be taught, and sending one set each month to the examiners with instructions to use them in the examination of teachers on the last Saturday in the month. The examiners generally accepted the questions and acted upon the instructions. The result was the elevation of the general average of the examinations and their complete unification.¹ This is a good example of the wise exercise by the State Board of its advisory power.

An attempt was made in 1899 to constitute the State Superintendent of Public Instruction and the State Board of Education the exclusive agencies for issuing licenses. The arguments advanced in support of the proposition were as follows: It would insure the same standard in all counties; it would equalize wages and elevate the school work in the poorer sections of the State; it would remove the possibility of using personal influence to secure a certificate; it would save teachers the time, expense and annoyance in going from one part of the State to another to take their examinations; and finally, it would give the county superintendents their summer months in which to plan their work for the ensuing year, or to attend advanced schools.² This seemed to many conscientious friends of education too great a centralization of power, and the law finally enacted was a compromise. The use of the questions furnished by the State Board of Education was now for the first time made obligatory. Applicants were given the right to elect

¹ *Bien. Rep't Supt.* Hopkins for 1871-2, pp. 55-6.

² *Bien. Rep't State Supt.* Geeting, 1895-6, p. 14. •

to have their manuscripts sent to the State Superintendent for examination, and a license granted by him is valid in any county. The State high school licenses were made to include, in addition to the common branches, such additional subjects as the State Board may elect. The State Board also fixes the standard of all licenses by indicating the minimum per cent. in each branch and the required average for each grade of license.¹ The authority of the county superintendent in respect to the revocation of licenses, was extended to those hereafter granted by the State Superintendent, with the right of appeal to that officer by the defendant.²

The experience in respect to the subject of licensing teachers may be briefly summarized as follows: Prior to 1852, complete decentralization, with the authority vested in district and township trustees (1824-1834) and later in the county examiners (1834-1852)³; complete centralization in the hands of the State Superintendent and his deputies (1852-1853); a compromise, effected by giving this authority to county officers (examiners, 1853-1873, and county superintendents, 1873-1902) with the right⁴ to grant licenses retained by the State Superintendent until 1865. Since that date there has been a gradual extension of the powers of the State Board of Education and the State Superintendent until they have become the controlling authorities in this matter.

III. *Course of Study and Gradation.* A successful school system demands effective instruction, capable government, stimulation of the pupils' interest and industry, economy

¹ *Laws*, 1899, pp. 488-491.

² *Laws*, 1899, p. 245.

³ There were numerous exceptions in favor of district trustees and patrons.

⁴ This power was seldom used.

of the teacher's time and labor, and the highest utilization of the school revenues. These ends can be attained only through the establishment of graded schools. A graded school is one in which a definite course of study is prescribed, through which pupils progress by regular steps, separate teachers being usually provided for pupils of different degrees of advancement. The development of such a graded system in Indiana has been due, more than to all other causes combined, to the wise foresight and prudence of the State Board of Education and the State Superintendent of Public Instruction.

The first legal utterance bearing on the subject of the course of study is found in an act of 1819, which authorized the trustees of an incorporated congressional township to distribute a part of the proceeds from the rent of school lands among the schools of the township "in proportion to the number of schools [scholars] learning the English language." But no allowance was to be "made for any scholar who is learning any other than the English language."¹ The provision of the law of 1824 requiring a certificate as to the teacher's qualifications, "particularly as respects his knowledge of the English language, writing and arithmetic,"² seems to lead to the conclusion that these subjects, and only these, were required to be taught. But in general the authority to determine in what branches instruction should be given was left to the district meeting of the patrons, and after 1843 to the district trustees.³

The comprehensive school law of 1852 did not designate any branches which were required to be taught. Three years later the school meeting was empowered to determine

¹ *Laws*, 1818-9, pp. 57-59.

² *Rev. Stat.*, 1824, p. 384. See also page 85 above.

³ *Rev. Stat.*, 1843, p. 314.

that matter.¹ The law of 1865 for the first time specifically declared the subjects in which instruction was compulsory.² In 1873 the school meeting was again given power to determine what branches, in addition to the common branches, should be taught; and the trustee was required to furnish the instruction requested.³

Statutes might designate the required branches and make the laws mandatory, but such legislation would not establish a graded school system so long as there existed no classification in the schools. In the early days no effort was made to carry the pupils regularly through a course of study. Each teacher managed his own school as he saw fit, riding his own "hobbies"—one emphasizing arithmetic, another geography and another orthography. The attempts to grade schools were, naturally, first made in private academies in cities or towns.

The school law of 1852 authorized township boards to "establish graded schools or a modification thereof" where practicable and convenient, and "so classify the children of the township as to secure to all equitable participation in the advantages thereof."⁴ No substantial change was made in

¹ *Laws*, 1855, pp. 176, 181. The use of the English language was required, but "other languages" (meaning German) might be taught "as a branch of education."

² It provided that "the common schools of the State shall be taught in the English language, and the trustees shall provide to have orthography, reading, writing, geography, arithmetic, English grammar and good behavior, and such other branches of learning and other languages as the advancement of the pupils may require and the trustees from time to time direct." *Laws*, 1865, p. 32. Four years later physiology and the history of the United States were added to the curriculum; and German was required, in case the parents or guardians of twenty-five or more children attending the school should demand it. *Laws, Spec. Sess.*, 1869, p. 40. In 1895 the curriculum was supplemented by the addition of "the nature of alcoholic drinks and narcotics and their effect upon the human system." *Laws*, 1895, p. 375.

³ *Laws*, 1873, p. 68.

⁴ *Rev. Stat.*, 1852, i, p. 442.

this law until 1861. In that year an act empowered boards to provide for a central school for the instruction of the more advanced pupils promoted from the primary schools of the township.¹ In the few townships in which this was done, it tended to make the course of study in the primary grades more uniform and regular and gave a unity to all the schools of the township. The chief obstacles in the way were the segregation of the population and the large expense for the benefit of a few pupils. These difficulties were in part obviated by enactments in 1873, empowering city trustees to employ superintendents and the trustees of two or more townships to combine and establish joint graded schools.* Out of these provisions and under the direction of the Department of Education have developed the district graded school, the township graded school, the union high school and the township high school.

The State Board of Education after a careful consideration of the subject of a uniform course of study, reported in 1872 that they were "unable to prescribe definitely any course of study for ungraded schools" because of the "diversity of conditions."³ They did, however, make some recommendations in regard to the elementary branches. The State Superintendent of Public Instruction reported in 1874, that twenty-six counties had adopted uniform courses throughout the townships. This progress was due in large measure to the suggestions of the county boards of education in the respective counties.

For ten years this question was the chief topic of discussion in the reports of local and State school officers, and in the sessions of the associations of teachers and of county superintendents. A number of conferences between com-

¹ *Laws, Reg. Sess.*, 1861, pp. 70-1.

² *Laws*, 1873, pp. 74-5.

³ *Indiana School Journal*, xvii, p. 490.

mittees from such organizations and the State Board of Education were held. As a result of all this investigation and consultation, the "Convention of County Superintendents" adopted, in 1884, a standard course of study covering a period of eight years, of six or seven months' duration.¹ They arranged the statutory "eight branches"² in a course of study, assigning to each subject its appropriate place and prescribing the time and order in which each should be taken up. Within a few years the boards of education in more than half of the counties had adopted the prescribed course. Through a union of effort on the part of county and city superintendents and the State Board of Education, a uniform course of study was prepared in 1890 for the district, graded and non-commissioned high schools of the State.³

This course is followed in practically all the counties of the State, although the Department of Education has no authority to enforce its use. Among the people there was not unanimous approval of this policy. Not until the Supreme Court had declared that "the separation of pupils into different schools or departments according to age and acquirements, is not an abridgment of their rights,"⁴ was there acquiescence in the system.

It was still felt that there was need of a State manual which would give uniform instructions and suggestions to teachers in respect to the best methods of carrying out the course of study. Almost every county had its own manual, and these varied greatly in points of merit.⁵ In 1892 the

¹ *Bien. Rep't Supt.* Holcombe for 1883-4, p. 102.

² See page 94 above, foot note 2.

³ *Bien. Rep't State Supt.* Vories for 1891-2, p. 7.

⁴ *Corey v. Carter*, 48 *Ind. Rep'ts*, 360; *State v. Grubb*, 85 *Ind. Rep'ts*, 213; *State v. Gray*, 93 *Ind. Rep'ts*, 303.

⁵ *Bien. Rep't Supt. Pub. Instr.* for 1893-4, p. 8.

Association of County Superintendents authorized the appointment of a committee of persons having large and successful experience in the various schools, to prepare such an aid to teachers. The result of the experiment was so generally gratifying that a similar manual has been issued from that time to the present, prepared since 1894 in the office of the State Superintendent. Its use is not obligatory.

The publication of a State manual led to a practically unanimous call for a series of bi-monthly questions upon the work covered during the previous two months of study. Such questions were prepared and distributed. "The State manual, uniform course of study, uniform directions and suggestions and uniform bi-monthly questions have unified the district school work and in fact the whole work as it was never unified before."¹

In 1883 a committee, composed of representatives of the Convention of County Superintendents and of the State Board of Education, was appointed to prepare lists of questions to be furnished county superintendents for the examination of candidates for graduation from the district schools.² Since then the lists have been regularly prepared and graduating exercises usually held under the supervision of the county superintendent. "No greater impetus," it has been said, "has been given to the work of district schools than that which has attended the introduction of this feature. Janus-like, it looks both ways—forward and backward. Backward over the entire school course, and necessitates efficiency at every point. It is destined to work a revolution, in that it strengthens the work all along the line. It secures better instruction, better gradation, and closer supervision. It looks forward to the high school, to which its diploma is a ticket of admission. It thus unites the district school and

¹ *Bien. Rep't State Supt.* Vories for 1893-4, pp. 9-11.

² *Ibid.*, for 1895-6, pp. 103-4.

the high school and as it marks a degree of success it is an incentive to good."¹ By an act of 1899 the county superintendent is required to provide for the examination of all applicants for graduation from the common schools or high schools not employing a superintendent.²

The State Board of Education early recognized the position of the State University in the school system and saw how it could be used directly to raise the standard of the high schools, and indirectly to promote the advancement of the common schools. In 1873 the Board of Trustees of the University agreed to receive without further examination applicants who presented certificates from certain high schools designated by the State Board of Education. At the same time the Trustees fixed the minimum standard of admission.³ Two years later a similar arrangement was made with Purdue University. In 1888 the State Board ordered that all commissioned high schools be visited by committees of the Board; "that the present list be modified by the reports of such visitors," and that thereafter no commission be granted except upon the recommendation of a member of the Board after an official visit to the high school. This policy has had an excellent influence upon the graded schools of the State, stimulating many cities and towns to extend their courses of study in order to secure the standing which a commission gives.⁴ The number of commissioned high schools has increased from 15, in 1873, to 176 in 1902. For several years fruitless attempts were made to secure a satisfactory uniform course of study for all the high schools. The State Board in 1889 suggested two courses for commissioned high schools—one, prescribing a minimum three years' course, the least upon which a com-

¹ Boone, *op. cit.*, p. 290.

² *Laws*, 1899, p. 242.

³ *Bienn. Rep't State Supt. Pub. Instr.* for 1873-4, p. 108.

⁴ *Ibid.*, for 1885-6, p. 84.

mission would be granted; the other, a full four years' course.

This uniformity now makes it possible for pupils to pass from one grade to the next higher on the certificate of the proper officer; so that they may without entrance examination go from the district schools to the Indiana State Normal School, Indiana University, Purdue University or other institutions for higher education which may honor the certificates from the State system.¹ This has been accomplished almost entirely without the aid of positive enactments. It was not until 1899 that the first act was passed which recognized high schools as a part of the system and gave them a legal existence.² We have here a notable instance of a natural development under the fostering care of a State department.

IV. *The Adoption of Text Books.* "Uniformity of text-books is a matter of no small moment to the purses of the parents and the progress of the pupils."³ Indiana has tried four methods of dealing with this subject. The policy prior to 1852 was to leave the selection and introduction of text-books entirely to the local officers and teachers. The consequent evils of want of uniformity, frequent change and heavy expense may be readily imagined.⁴

By the law of 1852 it was made the duty of the State Superintendent of Public Instruction to submit to the State Board a list of text-books; and the State Board of Educa-

¹ *Bien. Rep't State Supt. Pub. Instr.* for 1873-4, p. 12.

² *Laws*, 1899, pp. 424-5.

³ *Rep't Supt. Com. Schools*, 1855, p. 68.

⁴ The Superintendent of Common Schools in his report for 1845 exhibited the condition of affairs in the following words: "In half a dozen different schools you might not find any two of the teachers agreeing in their preference for books, and in each school you might find three or four kinds of publications all designed for the same purpose." *Doc. Journ.*, 1845-6, Pt. ii, pp. 103-5.

tion was required to promote the "interests of education . . . by the introduction of uniform school-books."¹ While the law seemed imperative there was no provision by which the Board could compel the local authorities to use the books recommended. According to their interpretation the law gave them merely advisory power.² Lists of books were prepared and submitted and were generally approved.³ The law of 1861 extending the powers of the county examiners required them to "see to the introduction of the authorized text-books into their schools."⁴ This would have given practical uniformity, had it not been amended a few months later by giving the State Board of Education merely the right of "approval of a uniform system of text-books."⁵

The method of "State recommendation" was a great improvement over the old way of local selection, but there was by no means a general uniformity. In the enumeration of the powers of the State Board in 1865, the authority to recommend text-books is not found.⁶ There was a return to the first method of selection by trustees, teachers or patrons. This unsatisfactory condition continued for eight years.

In deliberating upon the question of uniformity of text-books there were three chief points to consider; the territory (State, county or other unit) throughout which uniformity should prevail; the period during which no change should be made; the authority (State or local) by which uniformity should be enforced. In the next experi-

¹ See page 79 above. *Rev. Stat.*, 1852, i, 457. Compare Mr. Dumont's recommendations, p. 75 above.

² *Rep'ts Supt. Pub. Instr.* for 1852, *Doc. Journ.*, 1852, Pt. ii, p. 271; 1855, *Doc. Journ.*, p. 268.

³ *Rep't. Supt. Pub. Instr.* for 1853, *Doc. Journ.*, 1853-4, pp. 14-15.

⁴ *Laws, Reg. Sess.*, 1861, p. 78.

⁵ *Laws, Special Sess.*, 1861, p. 26.

⁶ *Laws*, 1865, pp. 34-5.

ment tried we find the county as the territorial unit; three years the minimum time limit; and a local board the authority for enforcement. The law of 1873 organizing the county Board of Education¹ gave that body authority (except in cities) to adopt text-books and each township was to conform, as nearly as practicable, to its action; but no text-book adopted by the board was permitted to be changed within three years except by a unanimous vote.² This law resulted in the adoption of books of a higher standard, but failed in part to accomplish its purpose because the exclusive use of the adopted books was not enjoined.³

There was a growing sentiment that text-books should be furnished more cheaply and should be uniform throughout the whole State. Various suggestions and recommendations were made from time to time by persons interested in education, and in 1889 the fourth experiment was made. It was a decided step towards centralization.

The State Board of Education was constituted a Board of Text-book Commissioners for the purpose of making a selection or procuring the compilation of a series of text-books for use in the common schools.⁴ Amendments were made to the law in 1891, 1893 and 1901, which corrected minor defects, added other books to the series, and exacted stricter accountability of those who handled the books and money.⁵ The present law empowers the Board to enter into five-year contracts with publishers, under which they agree to furnish books at the maximum prices stipulated in the

¹ See page 84 above.

² *Laws*, 1873, pp. 78-9. The minimum period four years later was fixed at six years. *Laws, Reg. Sess.*, 1877, p. 122.

³ *Bien. Rept State Supt. Smart* for 1875-6, p. 140.

⁴ *Laws*, 1889, pp. 74-81.

⁵ *Laws*, 1891, pp. 99-102; 1893, pp. 166, 172-4; 1901, p. 489.

law. In the distribution of the books, the township trustees and school boards make requisitions upon the county superintendent for the books required in their respective corporations. The county superintendent makes requisitions upon the State Superintendent of Public Instruction, who, in turn, forwards them to the publishers. The latter ship the books directly to the county superintendents, from whom the trustees or school boards procure them. These officers, either directly or through dealers, supply patrons with the books at the fixed prices. The trustees make quarterly reports of sales to the county superintendents and pay to them all moneys received. The county superintendent makes a full and complete report to the contractor and pays over the receipts. It is the duty of trustees and school boards to furnish the necessary books, so far as they have been adopted by the State, to the poor or indigent children of their respective corporations who desire to attend school and who otherwise would be unable to do so.

The constitutionality of the law was disputed. But the Supreme Court upheld it, declaring: "The Legislature has the authority to prescribe the course of study and the system of instruction that shall be pursued and adopted, as well as the books which shall be used. . . . It may also declare how the books shall be obtained and distributed."¹ By virtue of its merit the law has now won almost universal approval. It may not be unreasonable to expect that the next change in this direction will be a system of free textbooks.²

V. Length of the School Term "A general and uniform system of common schools, wherein tuition shall be without

¹ 122 *Ind. Rep'ts*, p. 462.

² *Messages of Governor Hovey, House Journ.*, 1889, pp. 67-69; *Governor Chase, House Journ.*, 1893, p. 24; also *House Bill, House Journ.*, 1881, pp. 146, 520.

charge and equally open to all," can not be had without a school year approximately uniform in length throughout the State. How slow the approach to this condition has been, will be shown in the following paragraphs.

The first general school law gave to the "inhabitants [patrons] of the school district" the authority to determine whether or not they should have a school, and how long the term should be extended (if at all) beyond the required three months.¹ This was repeated in subsequent laws for twenty-five years.

A drifting towards an equality in the length of the school year within the township was shown in the school law of 1849. The township trustees were required to provide "as many free schools as may be required for all attending scholars in such township;" and it was made their duty to make such arrangements that all the schools of their township should be taught an equal length of time (for at least three months), "without regard to the diversity in the number of scholars attending the respective schools."² But as this law went into force in those counties only which adopted it,³ complete equality of school privileges was not attained.

The school law of 1852 made no mention of a minimum term nor of the equality of the school year among the schools of a township. In 1855 the provision of the law of 1849, quoted above, was in substance re-enacted and made mandatory.⁴ The law was not at first strictly enforced. Three years after its passage we find the State Superintendent saying: "In the same township some schools are taught in summer, some in autumn, and some in winter. Some are kept one month, some two months and some three months."⁵

¹ See page 29 above.

² *Laws*, 1848-9, p. 125.

³ See page 66 above.

⁴ *Laws*, 1855, p. 166.

⁵ *An. Rep't State Supt. Pub. Instr.*, 1858, *Dec. Journ.*, 1858-9, Pt. ii, p. 295.

Gradually equality in the length of the school year within the township was secured. Progress towards uniformity throughout the State was slower. It was promoted, however, by the State adoption of text-books, the acceptance of a uniform course of study and the use of State manuals. At length, in 1899, a minimum term for the whole State was prescribed by law. The school trustees of each school corporation are now required to maintain a term of school of at least six months in duration, and to authorize a local tuition levy which, with the State's tuition revenue, will be sufficient to do so.¹ No authority is given to the central school officers to withhold any part of the State tuition revenue for failure to make the levy. The method of compulsion would doubtless be found in a writ of *mandamus*.

VI. *The Training of Teachers.* (a) *County Institutes.* For a quarter of a century before there was any recognition in the law of the teachers' institute, the leading educators had seen in this a means for the instruction of teachers and had put it to a practical test in many counties of the State.² Frequent recommendations³ of State officers and other progressive school men had been made for the encouragement of such institutes. State Superintendent Mills in urging the importance of this matter in 1856, declared: "The State has not expended a dime to improve her teachers, nor appropriated a dollar for the intellectual and moral development and culture of those who are to train her rising generation."⁴

A law of 1865 was the first to require examiners to hold, or cause to be held, teachers' institutes once a year. It authorized the appropriation of county funds to defray part

¹ *Laws*, 1899, p. 425.

² Boone, *op. cit.*, pp. 393, 394.

³ *An. Rep't State Supt. Pub. Instr., Doc. Journ.*, 1854-5, pp. 734-5; also Boone, *op. cit.*, p. 395.

⁴ *Ibid.*, 1856, *Doc. Journ.*, 39 Sess., Pt. i, p. 467.

of the expenses of such institutes.¹ In the first year of the operation of the law 58 institutes were held, in which 3,533 teachers received instruction. In a few counties the institutes were wholly neglected in spite of the fact that it was made obligatory upon the county examiner to hold them. Superintendent Hopkins recommended that attendance upon an institute five days in the year be made one of the conditions upon which licenses to teach should be granted.²

There went on during the decade an earnest discussion of the purpose, the nature and the best methods of institute work. In 1881 the State Board of Education, upon the request of the Convention of County Superintendents, had prepared an order of exercises and a suggestive outline of subjects. This was received with favor and others were afterwards prepared under the direction of the State Superintendent of Public Instruction.³ "The general effect of the use of the outlines was to unify the work throughout most counties, to increase relatively the amount of professional work, to improve the quality of educational discussion, correcting false doctrine, rationalizing the conceptions of education and the school, and directing the study and thought of teachers into more fruitful lines."⁴ They also helped to prepare the way for the adoption of a State course of study. In 1901 the payment of teachers for attending county institutes was authorized by law,⁵ though attendance is not yet compulsory.

The average enrollment of these institutes has increased from thirty-eight in a county in 1865, to more than one hundred and seventy-four in 1895.⁶ That they have exerted

¹ *Laws, Reg. Sess.*, 1865, pp. 35-36.

² *Bien. Rept.*, 1871-2, p. 57.

³ *Bien Repts of State Supt. Pub. Instr.* for 1883-4, p. 26; 1885-6, pp. 31-2.

⁴ Boone, p. 397.

⁵ *Laws*, 1901, p. 561.

⁶ *Bien Rept. State Supt. Pub. Instr.*, 1897-8, p. 317.

a wide influence cannot be questioned. Superintendent Hoss declared that they had resulted in the improvement of teachers; giving them better methods, clearer views of the work to be done, increased fondness for and devotion to work; awakening aspirations for higher attainments and greater usefulness; leading to the adoption of plans for associated and organized effort for education; and arousing a higher educational sentiment in the community.¹ It is believed by competent critics that institutes could be made even more serviceable by placing their management more fully under the control of the State Board of Education and giving that body authority to certify to the county superintendents the fitness of persons to teach in them.²

(b) *Township Institutes.* There were a few voluntary attempts at township institutes prior to any statutory provision for them. In 1873 it was enacted that "at least one Saturday in each month during which the public schools may be in progress, shall be devoted to township institutes or model schools for the improvement of teachers, and two Saturdays may be appropriated at the discretion of the township trustee of any township." Attendance was compulsory under penalty of forfeiture of one day's wages.³ In general these institutes were of great value; but there were numerous instances of worthless sessions due to indifference, incompetency and misdirection.

In 1884 State Superintendent Holcomb appointed a committee, which, under his direction, prepared an outline of work for use in township institutes.⁴ Subsequent outlines were prepared, usually, by committees appointed by the County Superintendents' Convention. In 1896 that organization by resolution intrusted their preparation to the

¹ *Bien. Rep't State Supt. Pub. Instr.*, 1865-6, *Doc. Journ.*, 1865, Pt. i, p. 315.

² *Ibid.*, 1887-8, p. 9; 1895-6, p. 321.

³ *Laws*, 1873, p. 79.

⁴ *Bien. Rep't State Supt. Pub. Instr.*, 1883-4, p. 90 ff

Department of Public Instruction. By the use of these outlines the work has been unified and elevated and greater interest has been shown by school officers, teachers and patrons.¹ In 1889 compensation for attendance at township institutes was authorized.²

(c) *State Normal School*. The State Normal School, as well as the teachers' institutes, was the outgrowth of the conviction that the State should provide some special means for the more thorough education of its teachers. With the exception of the ineffective attempts to establish a Normal and Model School in connection with the State University,³ no legislative action in this direction was taken until 1865. For nearly twenty years this subject had been discussed with considerable spirit in the "Indiana School Journal," the "Indianapolis Journal," educational associations and reports of State officials.⁴

In 1865 the State Normal was established under the control of a board appointed by the Governor with the approval of the Senate. Funds for its support were appropriated out of the State school revenue for tuition.⁵ The institution began its career in 1870 without the confidence and support of the public. The entire number attending the first term was only forty. That it has justified its existence and won the approval of the people is shown by the gradual increase in the attendance, which reached 1,672 in the year 1899-1900. The only supervision which the central school officials have over this institution, is the right of the State Board of Education to appoint a board of visitors (three) who are required to make a careful inspection of the school and report to the State Board.⁶

¹ *Bien. Rep't State Supt.* Geeting, 1895-6, pp. 336-7. ² *Laws*, 1889, p. 67.

³ Boone, pp. 382-4.

⁴ *An. Rep'ts Supt. Pub. Instr.*, 1852; 1856 in *Doc. Journ.*, Pt. i, pp. 467-8; 1859; 1860, *Doc. Journ.*, 1860-1, Pt. ii, pp. 336-9; also Boone, pp. 387-8.

⁵ *Laws, Spec. Sess.*, pp. 140-142.

⁶ *Laws*, 1873, p. 199.

(d) *The Teachers' Reading Circle.* Another agency, unofficial in its origin, for disciplining the mind, broadening the sympathy and ripening the culture of the teacher is the "Teachers' Reading Circle." This organization was effected in 1884 by a committee of the State Teachers' Association. A committee appointed by that Association together with the State Superintendent and his Deputy constitute the governing board of the Reading Circle. The Deputy Superintendent has usually acted as secretary; and hence, the connection with the Department of Education has always been intimate. The questions upon the science of teaching used in the examination of teachers are based upon the professional work of the reading circles. The director of the local circle is the county superintendent, and the success of this movement has been due to the voluntary services which these officers have rendered without compensation. They conduct the annual examinations upon questions prepared by the central board upon the year's work. In 1885 the State Board of Education ordered "that the Reading Circle examinations in the Science of Teaching be accepted by the County Superintendents in place of the county examination on that subject, and that the average of their four successive yearly examinations in the Science of Teaching be accepted by the State Board in the examination for State Certificates."¹ In 1896 a similar privilege in regard to the examinations in the "general culture" book was granted.² The outlines of the year's work are issued in connection with the outlines for the township institutes; and it is generally at these meetings that the subject-matter of the reading circle work is discussed.

By means of this official recognition of the Reading Circle it has secured a prestige which it could not have attained otherwise. The number of members has increased from

¹ *Bien. Rep't State Supt. Pub. Instr.*, 1895-6, p. 478.

² *Ibid.*, p. 478.

1,600 in 1884-5, to 14,379 in 1899-1900, more than 92 per cent. of the total number of teachers employed.¹ "The Circle has wielded a conscious influence on the very life of the school, supporting and supplementing all other school agencies, and itself becoming an important and permanent institution." *

VII. *Compulsory Education.* For more than twenty-five years the subject of compulsory attendance has from time to time received attention in the reports of the Superintendents of Public Instruction,³ in the recommendations of educational associations, in the messages of Governors and in the reports of legislative committees.⁴ Finally, in 1897,⁵ the Legislature gave its sanction to compulsory education. The law was amended in 1899⁶ and again in 1901.⁷ As it stands now the act requires that all children between the ages of seven and fourteen be sent to school "for a term or period not less than that of the public schools of the school corporation where the child or children reside." The necessary books and clothing must be furnished to poor children by the proper school authorities.

The enforcement of the act is entrusted to one or more local truant officers in each county. Under the first law the local officer received his appointment from a board of truancy consisting of the county superintendent, the Secretary of the Board of State Charities and one member of the State Board of Education designated for that purpose. The method of appointment proved unsatisfactory,⁸ and a change was made in 1901. While the State Board of Truancy still

¹ *Bien. Rep't Supt. Pub. Instr.*, 1899-1900, pp. 780-1.

² *Ibid.*, 1895-6, pp. 104-5. ³ *Ibid.*, 1869-70; 1871-2; 1887-8; 1889-90.

⁴ *House Journ.*, 1887, p. 472; 1891, pp. 69, 151; 1895, p. 507. *Sen. Journ.*, 1891, p. 651; 1893, p. 490.

⁵ *Laws*, 1897, pp. 248-250. ⁶ *Laws*, 1899, pp. 547-551. ⁷ *Laws*, 1901, pp. 470-3.

⁸ *Report of Board of State Charities*, 1899, p. 22.

retained a general supervision over the administration of the law, the county boards of education were constituted local boards of truancy. It is their duty to appoint one truant officer in each county to see that the act is enforced. Each city having a school enumeration of 5,000 or more children,¹ may in the discretion of the county board of truancy constitute a separate district for the administration of the act. In such cases the school board of the city appoints the truant officers in proportion to the school enumeration.² School commissioners, trustees and boards of trustees are empowered to maintain either within or without the corporate limits a separate school for incorrigible and truant children, who may be compelled to attend such school for an indeterminate time.³ Children adjudged "confirmed truants" by the truant officer and the county superintendent or the city superintendent, may be sentenced by the Judge of the Circuit Court to the Reform School for boys or the Industrial School for girls.

The operation of the law has been satisfactory and its results have been gratifying.⁴ The average daily attendance

¹ Two or more cities or towns may combine for this purpose.

² The number cannot exceed five.

³ Indianapolis is the only city which has yet established a school of this kind.

⁴ The following table is taken from the reports of the Board of State Charities for 1898 and 1899:

	1898.	1899.
Number of truant officers	237	194
Number of pupils brought into school through the operation of the law	21,447	19,160
Number who remained in school longer than twelve weeks*	13,565	13,703
Number who received aid	7,634	7,380
Total cost of assistance given	\$15,806	\$15,414
Number of prosecutions		113
Number of prosecutions successful		98
Cost of administering the law—Salaries.	35,544.61	28,028.00
Assistance	15,806.43	15,414.54
	<u>\$51,351.04</u>	<u>\$43,442.54</u>

Rep'ts Bd. State Charities, 1898, p. 70; 1899, pp. 151-2.

* The period of attendance required under the law prior to 1901.

at the public schools was 32,089 larger in 1898 than in 1897. From this it may be inferred that the law was obeyed in many cases without the services of the truant officer. It remains to be seen whether the law will be equally and satisfactorily enforced in all counties in the absence of a more centralized administration such as is found in Connecticut.¹

VIII. *Libraries.* One of the means, recognized in law and practice, for promoting the general diffusion of knowledge and learning is the public library. Prior to 1852 ineffective attempts were made to establish county libraries² and school district libraries.³ Library associations were organized, but few county and no district libraries were ever actually opened. Those that were established were, with rare exceptions, neglected and lost or consolidated with other libraries. Such things were luxuries, and even school comforts were wanting in the districts.⁴

(a) *Township Libraries.* It was a common opinion that the failure of the plans for county and district libraries was due in part to the lack of advice and control by some competent central authority. The outcome of this impression was the legislation in 1852, imposing for two years⁵ a State tax for the support of township school libraries. This sum was expended for the purchase of books by the State Superintendent under regulations adopted by the State Board of Education. The libraries were distributed to the counties according to population.⁶ Township trustees were

¹ Webster, *op. cit.*, pp. 43-46.

² *Constitution of 1816*, art. ix, sect. 5; *Revised Stat.*, 1824, pp. 258-60; *Ibid.*, 1838, p. 401; *Laws*, 1846-7, pp. 103-4.

³ *Laws*, 1836-7, p. 53.

⁴ Boone, *op. cit.*, pp. 337 and 339.

⁵ In 1855 another levy was made. *Laws*, 1855, pp. 179-180.

⁶ Later the basis of distribution was the school enumeration, and still later a mixed basis was adopted.

responsible for their care and could not sell or alienate them for any cause whatever. The trustees were "accountable for the preservation of said libraries"; but no method of enforcing that accountability was even suggested.¹

The selection and purchase of the books by the Board of Education was a wise plan from the standpoint either of economy or of education. From the three assessments there were realized about \$276,000 and nearly 700 libraries and over 220,000 volumes were sent out at the first distribution.² The benefits derived from these centers of culture were no doubt very great. But many books were lost or stolen and the number of readings decreased. A subsequent levy was made in 1865 to replenish the libraries, and the township trustee was made personally accountable for the preservation of the books and was required to report annually to the county examiner the number of books in his charge.³

For twenty years appreciation of the township library seemed on the decline, and there was a continual loss of books. Recently there has been a revival of interest in the subject, and efforts to increase their number and extend their influence have been made.⁴ Under a law passed in 1899 it is the duty of the trustee, after an election which authorizes such action, to levy a tax for the establishment and support of a township library. Its management is placed in charge of a township library board composed of the school township trustee and two residents of the township appointed by the Judge of the Circuit Court (one of whom must be a woman). Before the purchase of any books the township library board must consult the Public

¹ *Rev. Stat.*, 1852, i, p. 456.

² *An. Rept's Supt. Pub. Instr.*, 1855, pp. 125, 258; 1856, *Doc. Journ.*, p. 471, 1857.

³ *Laws*, 1865, p. 31.

⁴ *Laws*, 1885, p. 9; 1895, p. 240; 1899, p. 228.

Library Commission.¹ Those interested in this agency for culture and education are confident that these provisions will insure the exercise of better judgment in the selection of books, and greater attention to competency in the superintendence of the libraries.

(b) *Traveling Libraries.* The Public Library Commission mentioned above is composed of three members appointed by the Governor who serve without compensation for a term of four years. The State Librarian is *ex officio* secretary of the Commission. They have the control and management of the traveling libraries; prepare and furnish lists of books with prices suitable for public libraries; and furnish information or advice as to the organization, maintenance or administration of any library in the State when requested to do so by the librarian or trustees.² The first biennial report of the Commission shows a satisfactory beginning of the experiment.³

(c) *Libraries in Cities and Towns.* In 1843 provision was made for the incorporation of private libraries in cities, towns or villages. These received no public aid and were subject to no official control.⁴ In 1873 cities were given authority to take stock in such corporations and to levy a tax in order to pay for it.⁵

In 1881⁶ in any city having ten thousand inhabitants or more, the board having charge of the public schools was given discretionary power "to establish a free public library in connection with the common schools," to provide for its care and government and to levy a tax for the support and maintenance of it. Two years later the benefits of the law

¹ *Laws*, 1899, pp. 136-7. See also section (b) below.

² *Laws*, 1899, pp. 134-136.

³ *Report*, 1899-1900, pp. v and xiv.

⁴ *Rev. Stat.*, 1843, p. 404.

⁵ *Laws*, 1873, p. 176.

⁶ *Rev. Stat.*, 1881, sects. 4524-5.

were extended to all incorporated towns and cities.¹ The number of libraries organized under these laws was not great. The law of 1901 transferred the power to make the tax levy to the common councils of cities and the town boards of towns and made it mandatory if a certain sum of money is raised by popular subscription. The library is under the management of a board of seven persons, three of whom are appointed by the Judge of the Circuit Court, two by the board of school trustees and two by the common council or town board as the case may be. The members are subject at any time, for cause shown, to removal by the respective appointing powers.²

(d) *The State Library.* The State Library is an institution which is being made of more value to the general public and to investigators. It was established by law in 1825,³ largely for the purpose of collecting and preserving the State publications. For this reason it was placed under the authority of the Secretary of State. This officer, being occupied chiefly with other matters, gave it little attention and its growth was exceedingly slow. In 1841 the office of State Librarian was created, and that officer was thereafter elected by the General Assembly on joint ballot for a term of three years.⁴ Under this law the Librarian was, with a few notable exceptions, appointed in reward for some political service or because of favoritism and not because of merit and competency. Hence little progress was made.

In 1895 the State Board of Education was constituted the State Library Board and given authority to elect a State Librarian for a term of two years, or until his successor is elected. The State Library Board has power to remove for cause, at any time, the State Librarian or any of his assist-

¹ *Laws*, 1883, p. 209. ² *Ibid.*, 1901, pp. 81-86. ³ *Ibid.*, 1824-5, pp. 47-9.

⁴ *Laws*, 1841, pp. 114-119. In 1852 the term was reduced to two years. *Rev. Stat.*, 1852, p. 348.

ants.¹ The good effect of these provisions is already quite noticeable.

This brief survey of the educational system shows that the history of its development may be roughly separated into two periods—one of decentralization, prior to 1843, and one of centralization, since that time. The discussions during the six years preceding that date reveal evidences of dissatisfaction with the system, and a decided drift of public opinion towards centralization. It is not to be understood that a well formulated scheme of central control was adopted in 1843. But the making of the State Treasurer the Superintendent of Common Schools was the beginning of the movement which has been retarded only occasionally, when the progress has been too rapid to secure popular approval. As soon as one experiment had been justified by the results, another forward step was taken. As in the case of most political institutions which are successful, the present system is not one contrived by *a priori* theorists, but one which is an historical product. It has grown by the application of wisdom and common sense to the practical problems of education.

5. SCHOOL ADMINISTRATION AT THE PRESENT TIME.²

I. *Local Administration.* (a) *The District Meeting and the Director.* The statutes still recognize the legal existence of the district meeting. All taxpayers of the school district (except married women and minors) who have been listed as parents, guardians or heads of families, are entitled to assemble annually on the first Saturday in October and elect one of their number director of the school. They have

¹ *Laws*, 1895, pp. 234-5.

² In presenting the leading features of the present administration of the common schools it will be necessary in some cases to repeat in brief the substance of statements already made.

authority also to decide what branches, in addition to those prescribed by law, shall be taught, and the length of the school term beyond the period required by law. Subject to the "sound discretion" of the township trustee, they may direct repairs of the school-house and may petition the trustee for the sale or removal of the school-house, for the erection of a new one, or upon any other subject connected therewith. In case of a failure to elect, the township trustee has power to appoint a director.¹ In practice this seems to be the most common procedure. The district meeting in many parts of the State has become obsolete.

The director presides at school meetings and records their proceedings. He is the organ of communication between the inhabitants and the township trustee. He is charged with the care of the school-house and property. He visits and inspects the school and may exclude refractory pupils, subject to appeal to the trustee.*

(b) *The School Township.* The district meeting has no corporate existence. The real primary unit in the rural districts is the school township; in the urban districts, the school town or school city. "Each civil township and each incorporated town or city in the several counties is declared a distinct municipal corporation for school purposes."² The trustee of the civil township is also trustee, treasurer and clerk of the school township. He is elected by the voters of the township for a term of four years.⁴

The trustee has extensive authority in school matters. "The voters and taxpayers have but little, if indeed any, voice or part in the control of the details of educational affairs."⁵ He receives the school revenue apportioned to

¹ *School Law* (ed. 1897), sects. 4498-9.

² *Ibid.*, sects. 4503-4506.

³ *Ibid.*, sect. 4438; *Laws*, 1897, p. 64.

⁴ *Laws*, 1899, p. 64.

⁵ *Wallis v. Johnson Township*, 75 *Ind. Reports*, 374.

his township, keeps it separate from the funds of the civil township, applies it to the purposes specified, and is required to render an annual account of his receipts and expenditures to the township advisory board.¹ He employs teachers;² establishes and locates a sufficient number of schools; provides suitable houses, furniture and apparatus; and has the care and management of the school property.³ He may either singly or jointly with another trustee establish a high school.⁴ He has considerable discretion in respect to the consolidation of schools.⁵ He is required annually to make elaborate statistical reports to the county superintendent.⁶ It is his duty, either in person or by deputy, to take an annual enumeration of all unmarried persons between the ages of six and twenty-one years, resident in his township. This list includes the names of parents or guardians, and designates the township in which each resides.⁷ For failure to do his duty in respect to making the various reports, his township suffers a diminution of its apportionment of the State tuition revenue.⁸ In appeals from the decisions of directors, excluding pupils, his decisions are final.⁹ He has the care and custody of the lands belonging to the congressional township fund and, with the consent of the voters of the township, may lease or sell them.¹⁰ The office is obligatory, and the trustee is subject to removal by the county commissioners for fraud.¹¹ The tax levy of the township for school purposes is made by the township advisory board.¹²

¹ *School Law* (ed. 1897), sects. 4441, 4442; and *Laws*, 1899, pp. 155-6.

² For exceptions see page 38 above.

³ *School Law* (ed. 1897), sect. 4444.

⁴ *Laws*, 1901, pp. 514-5.

⁵ *Laws*, 1901, pp. 159, 437; also page 39 above.

⁶ *School Law* (ed. 1897), sect. 4450.

⁷ *Ibid.*, sect. 4472

⁸ See page 71 above.

⁹ *School Law* (ed. 1897), sect. 4506.

¹⁰ *Ibid.*, sect. 4328-9.

¹¹ *Ibid.*, sects. 4453, 4456.

¹² *Laws*, 1899, p. 151

Viewed from the present, it appears that the schools would have been benefited to a still greater degree if the educational functions of the township had been separated from the civil functions and assigned to a board chosen because of its interest in education and its professional qualifications. Such a recommendation has been made repeatedly by the most eminent educators. This may be one of the progressive steps of the near future.

(c) *Cities and Incorporated Towns.* In cities and incorporated towns the schools are under the management of a board of three school trustees,¹ elected in cities by the common council,² in towns by the board of town trustees.³ These corporations are distinct from the civil corporations,⁴ and their actions are not subject to review by the civil authorities. Their powers and duties are, in general, similar to those of the township trustee.⁵ In addition they have authority to establish kindergartens⁶ (in cities having a population of 6,000), night schools⁷ (in cities having a population of 3,000), manual training schools⁸ (in cities having a population of 100,000), and to employ a superintendent⁹ for the purpose of supervision and direction of the entire system. Town schools are subject to the authority of the county superintendent;¹⁰ but any city schools having a regularly employed superintendent may be exempted from his authority, provided a written request to that effect be made by the school board of the city.¹¹

¹ In Indianapolis a board of five school commissioners has charge of the schools.

² In a few of the larger cities a different method is used. See Rawles, W. A., *The Government of the People of the State of Indiana*, 1900, pp. 108-9.

³ *School Law* (ed. 1897), sect. 4439.

⁴ *Wright v. Stockton*, 59 *Ind. Repts.*, 65.

⁵ *School Law* (ed. 1897), sects. 4440-4, 4450.

⁶ *Laws*, 1901, p. 123.

⁷ *School Law* (ed. 1897), sect. 4447 b, 4447 c.

⁸ *Ibid.*, 4447 d-4447 f.

⁹ *Ibid.*, sect. 4445.

¹⁰ *Ibid.*, sect. 4429.

¹¹ *aws*, 1899, p. 242.

(d) *The County Superintendent.* As the township trustee is the central school authority for the township, so the county superintendent unifies the schools of the county. He is elected by the township trustees for a term of four years, subject to dismissal for cause by the board of commissioners.¹ He has general supervision of the schools of the county, except the city schools. It is his duty to grant teachers' licenses to all applicants when their fitness has been ascertained by examination. He may revoke such licenses for causes specified in the statute. He is required to visit each school annually; to encourage and attend teachers' institutes; to make annual reports to the state superintendent and to the bureau of statistics, embodying the enumeration of children of school age and statistical information relative to the school fund, the condition of school property, and the general progress of education. He acts as the medium of communication between the state superintendent and subordinate school officers and must at all times carry out the orders and instructions of the State Board of Education and the State Superintendent of Public Instruction. It is his duty to make requisition for the textbooks needed in the county and to see that a sufficient number are on hand. He is authorized to inspect the books of county officers having the care of the county school funds and may institute suit to recover moneys due the school fund.²

An important part of his work is the hearing of appeals from the decisions of the township trustees. For the purpose of preventing vexatious and expensive litigation the law provides that his decision shall be final in regard to certain enumerated subjects. The law as amended in 1899 declares: "In all controversies of a general nature arising

¹ See page 84 above for qualifications.

² *School Law* (ed. 1897), sects. 4424-29, 4431, 4435.

under the school law, the decision of the county superintendent shall first be obtained; and then an appeal, except on local questions relating to the legality of school meetings, establishment of schools, and the location, building, repair, or removal of school-houses, transfer of persons for school purposes, and resignation and dismissal of teachers, may be taken from his decision to the State Superintendent of Public Instruction on a written statement of facts, certified by such county superintendent. Nothing in this act, however, shall be construed so as to change or abridge the jurisdiction of any court in cases arising under the school laws of this State.”¹ Attorney-General Baldwin, in an official opinion in respect to the extent of his jurisdiction and the authority of the courts, expounded the law as follows: “Upon any question arising out of the dismissal of a teacher, if the teacher has suffered any damages, he may bring a suit against the township to recover whatever loss he has sustained. The court can only examine whether just cause existed for his dismissal, in order to see if he is entitled to damage for a wrongful dismissal, but cannot reinstate him as a teacher, for as to that the superintendent’s decision is final. But on all those questions relating to the government and control of schools and school buildings, and school regulations, such as the establishment of schools, and the location, building, repair, or removal of school-houses, or transfer of persons for school purposes, or even the attachment of a person to a certain school and resignation of teachers, his decision is final, and no action can be maintained in the courts touching the same. This must necessarily be so, for courts cannot undertake the superintendency of school matters.”²

For a failure to make his reports to the State officers, the

¹ *Laws*, 1899, p. 242.

² *School Law* (ed. 1897), p. 192.

county suffers a loss of a part of its State tuition revenue.¹ For immorality, incompetency, or general neglect of duty, or for acting as agent for the sale of any text-book or school supplies, he may be impeached as any other county officer.² This necessitates an accusation in writing, an indictment by the grand jury and a trial by jury in a Circuit or Criminal Court.³ Few cases of removal have occurred. In most counties the office is satisfactorily filled. It is believed by some that better officers would be secured if the appointment were placed in the hands of the Judge of the Circuit Court. The county superintendent is an agent of the State and should not be dependent for his election upon the township trustees who are his subordinates in the administration of school affairs.

Among the State school officials there has been no dissenting voice in the general approval of this office. It was well summed up by State Superintendent Geeting, who said: "No other agency has done so much toward securing such an organization of the public schools as insures the greatest possible benefit from the expenditures made for public education as has this school official."⁴ His efficiency, it may be added, has been due in great measure to the vital relation existing between him and the State Superintendent of Public Instruction and the State Board of Education.

(c) *The County Board of Education.* The county board of education is an organization designed to represent all the public school interests of the county, those of the district, town and city.⁵ Its composition and powers have already been explained sufficiently.⁶ Its chief value lies in the fact that it is a representative body of experts, and hence, its advice has great weight.

¹ See page 71 above.

² *Laws*, 1899, p. 241.

³ *Laws*, 1897, pp. 281-2.

⁴ *Bien. Rep't* for 1895-6, pp. 444.

⁵ *School Law* (ed. 1897), sect. 4436.

⁶ See pages 84, 101 above.

II. *The State Administration.* (a) *The State Superintendent of Public Instruction.* There are two State authorities in the administration of the common school system, the State Superintendent of Public Instruction and the State Board of Education. The former by virtue of his constitutional office and his statutory powers is properly regarded as the head of the system. He is elected by a popular vote for a term of two years¹ with no limitation upon the number of terms he may serve. His salary is \$3,000.²

As most of his powers and duties have been already discussed in previous sections of this chapter, it will be sufficient here to enumerate them briefly and consider others not fully treated heretofore. The law charges him with the administration of the system of public instruction; a general superintendence of the business relating to the common schools; and a supervision of the school funds and school revenues. He is required to advise school officers concerning the administration and construction of school laws; to report to the General Assembly biennially, giving an exhibit of school funds and revenues, of statistics, of his labors, of estimates for the following year, and the estimated value of school property. It is his duty to visit each county once during his term and examine the auditor's books to ascertain the amount and safety of the school funds and revenues.³

In the apportionment of the school revenue for tuition he has responsible duties. The county auditors report to him semi-annually the amount of revenue for tuition collected and ready for apportionment in their respective counties. He apportions this to the several counties upon the basis of the enumeration of the school children between the ages of six and twenty. He has authority to withhold a portion of

¹ *School Law* (ed. 1897), sect. 4406.

² *Laws*, 1901, p. 117.

³ *School Law* (ed. 1897), sects. 4406-10, 4413, 4420.

the share due to any county for the failure of the county superintendent or the county auditor to make the proper reports.¹ The county auditor makes his apportionment so as to equalize the revenue of the townships.²

The State Superintendent may ask county auditors, county superintendents, county treasurers, township trustees, clerks and treasurers to furnish copies of all reports required to be made by them and other information relating to the condition of the school funds, revenues and property of the common schools and the condition and management of the schools which he may deem important. He prepares blanks³ for the necessary reports and prescribes forms and modes of book-keeping for county auditors and county treasurers;⁴ and he directs the preparation of the blanks for teachers' contracts.⁵

The list of publications sent out from the office of the State Superintendent of Public Instruction includes his Biennial Report, irregular editions of the school law, the State manuals, outlines of township institute work, a program of recitations and study, "arbor" and "bird" day programs (with selections for reading or recitation), suggestions for the study of local history, directories, bulletins and letters.

The duty of the State Superintendent in respect to appeals is not so engrossing as in some other States,⁶ because of the jurisdiction of the courts and the large final jurisdiction of the county superintendents.⁷ The law allows appeals from the county superintendent in all cases not specified in the clause defining the appellate jurisdiction of that officer. In

¹ *School Law* (ed. 1897), sects. 4477-4486, 4431.

² See page 69 above.

³ Seventeen different "forms" are issued.

⁴ *School Law* (ed. 1897), sects. 4414-4416.

⁵ *Laws*, 1899, p. 173.

⁶ See Webster, W. C., *Recent Centralising Tendencies in State Educational Administration*, chapter x.

⁷ See pages 119-20 above.

regard to the method of procedure the law leaves nothing to the discretion of the State Superintendent. It is provided that "the rules that govern appeals from Justices of the Peace to the Circuit Court shall be applicable in appeals from county superintendents to the Superintendent of Public Instruction."¹ The appeal must be taken within thirty days; an appeal bond is necessary; and the county superintendent must send a transcript of the record, together with all papers in the case, to the State Superintendent, with his certificate endorsed thereon. But the State Superintendent may summon witnesses and try the case *de novo* upon its merits.² The only means the State Superintendent has by which to enforce his decisions and orders is the writ of *mandamus*.

A few illustrations will be sufficient to show the extent of the influence of the State Superintendent's personal judgment in the local administration of the schools. Probably a larger number of cases coming before the State Superintendent relate to the granting and revocation of licenses than to any other subject. Some of the principles laid down are the following: If a teacher loses his license, he remains licensed, and he should be treated so, provided he can prove the facts; an applicant may be refused a license on the ground of incompetency to govern a school; if an applicant is not satisfied with the grading of his county superintendent, he may appeal to the State Superintendent; if a patron of the school thinks a teacher has been graded too liberally, he has the same right of appeal; *mandamus* will lie to compel a county superintendent to issue a license after he has been so ordered by the State Superintendent.

Another important class of cases arises out of the employ-

¹ *School Law* (ed. 1897), sect. 4538.

² 33 *Ind. Rep'ts*, 333.

ment and dismissal of teachers. It has been held, that a trustee is liable on his bond for the misappropriation of school revenue which he has paid to an unlicensed teacher; that patrons cannot determine the selection of a teacher by protesting against all the world except a certain person; that a contract with a teacher may be rescinded when he is charged with outrageous crime; that deductions cannot be made from a teacher's salary on account of the closing of the school because of an epidemic, nor on account of the burning of a school house, nor on account of the abolishing of a department, nor on account of dismissal for legal holidays; that a teacher cannot be compelled to perform the duty of janitor without his consent; and that a teacher discharged without cause may recover compensation.

Another class of cases relates to the course of study and the use of the Bible in the schools. The county board may adopt a course of study and compel every pupil to take the entire course in the order prescribed on penalty of expulsion; they may adopt text books for high school subjects in the township graded school and enforce their use by all reasonable rules. If neither the county board of education nor the trustees individually have prescribed a course of study, the county superintendent may arrange a course of study and direct its enforcement in the schools; and the refusal of a teacher to obey the superintendent in this respect would warrant a refusal to grant him another license. The whole matter of Bible reading and prayers is left with the good judgment and conscience of teachers.

In the matter of rules and discipline cases are frequently brought before the State Superintendent. A teacher may exclude a pupil for truancy.¹ The teacher has the right to make reasonable rules in the absence of regulations estab-

¹ This rule is doubtless annulled by the law in regard to compulsory attendance. See *Laws*, 1901, p. 470.

lished by the proper authority. A teacher may enforce corporal punishment, although its use is discouraged. Immoral or licentious persons may be excluded even though their conduct may be proper while at school. Into this last field the courts have extended their jurisdiction to such an extent that they have left little to the discretion of the State Superintendent.

In addition to the decisions rendered in *bona fide* cases he is required to render a written opinion to any school officer asking the same, touching the administration or construction of the school law.¹ These opinions are entitled to great weight and may be decisive.

Besides the control wielded by virtue of his statutory authority and appellate jurisdiction, the State Superintendent exercises a wide influence by means of his advisory powers. In addition to those instances cited above on former pages,² much pertinent advice has been given by circular letters to trustees respecting the organizations and functions of township boards of education, township libraries, the purchase and care of furniture and apparatus, the employment of teachers, the keeping of records and papers and the preservation of documents.³

State Superintendent Holcombe, impressed by the report of the State Board of Health, recommended mandatory legislation to secure the proper construction of school houses.⁴ Since no action was taken by the Legislature, succeeding State Superintendents thought it their duty to present plans for the proper construction and ventilation of school buildings, and to offer suggestions for guidance in the selection

¹ *School Law* (ed. 1897), sect. 4408.

² See pages 97, 105, 106, 108 above.

³ See especially the *Report of State Supt. Hoss* for 1865-6, *Doc. Journ.*, pt. i, pp. 364-9.

⁴ *Bien. Rep't.*, 1883-4, p. 33-4.

of sites for school houses and in the erection of the other necessary buildings.¹ Such designs and recommendations have been followed in a number of instances. The State Superintendent by his sound advice on this subject is contributing materially to the physical comfort of the pupils and the efficient discipline of the schools.

His influence for good is also recognized in the management of the State Normal School by his membership on the Board of Trustees of that institution. His guiding hand is felt in the work of the Teachers' Reading Circles by reason of membership on its board of directors. While there has been a gradual increase of the authority of the State Superintendent since the creation of the department in 1852, it has hardly kept pace with the rapid growth of the power of the State Board of Education. It is as a leading member of this Board that much of his salutary influence has been exercised over the school system.

(b) *The State Board of Education.* From a board without experience and without decisive authority, the State Board of Education has developed into a body of experts with extensive discretionary power, whose wise recommendations have almost the binding force of legal enactments. The present composition of the State Board of Education is as follows: The Governor of the State, the State Superintendent of Public Instruction, the President of the State University, the President of Purdue University, the President of the State Normal School, the Superintendents of common schools of the three largest cities in the State, and three citizens of prominence actively engaged in educational work in the State, appointed by the Governor, at least one of whom must be a county superintendent.² The term

¹ See especially the *Bien. Reports of State Supt. Pub. Instr.* for 1895-6, pp. 491-517; 1897-8, pp. 26-30, 201-296; 1899-1900, 592-688.

² *Laws*, 1899, p. 426-7.

of the appointed members is three years. The State Superintendent of Public Instruction is *ex officio* president of the Board. The meetings of the Board are held upon the call of the president or a majority of its members at a place designated in the call.¹ One of the great elements of its strength has been the professional, permanent and non-partisan character of its composition.

The powers and duties of the Board were, in the original law, contained in less than eight lines.² In the revision of the school law of 1865, four brief sections were needed.³ One of these sections gave the Board authority to grant State licenses. This point has been discussed elsewhere⁴ and needs no further comment here. The next section,⁵ though worded briefly, was potential for great things. It read: "Said Board at its meetings shall perform such duties as are prescribed by law, and may make and adopt such rules, by-laws and regulations as may be necessary for its own government, and for the complete carrying into effect the provisions of the next section of this act [relating to State certificates] and not in conflict with the laws of the State, and shall take cognizance of such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss and determine the same." The authority to take cognizance of matters not otherwise provided for, has been expanded to include many powers not specifically granted. It has not infrequently happened that the Board has assumed an authority which has been pretty generally, though voluntarily, recognized, and later this action has been followed by legislation making its rules and regulations mandatory.⁶

¹ *Laws*, 1899, pp. 426-7.

² *Rev. Stat.*, 1852, i, p. 457.

³ *Laws, Reg. Sess.*, 1865, pp. 23-4.

⁴ See pages 90, 91 above.

⁵ *School Law*, 1852, p. 52-3.

⁶ See pages 90, 91, 104.

The Board also exercises directly an extensive control over the work of high schools through its practice of visiting and inspecting all high schools which apply for commissions and by designating a minimum course of study which will entitle them to the privileges of commissioned high schools. "The school officers and teachers follow almost universally the courses of study prescribed for graded schools, non-commissioned high schools and commissioned high schools."¹ "The most remarkable development in Indiana's school system in the last ten years has been in its high schools."² And the influence of the State Board of Education is one of the important causes of this progress, not only increasing the number of such schools but also raising the standard as well. It is not unreasonable to predict that in the near future the Legislature will prescribe a minimum course for all high schools or authorize the State Board of Education or the State Superintendent to do so, and will require a regular visitation of the commissioned high schools by some member or appointee of the State Board of Education.

One of the most responsible duties of the State Board of Education is that connected with the adoption of uniform text-books. The labor of examining conscientiously the various books submitted is onerous, and upon the judgment of the Board depend largely the educational progress of the pupils and the financial interests of the patrons. When we learn that the State contract system has been tried and abolished³ in other states, and when we recognize the growing popularity and acknowledged benefits of the system in Indiana, we may well conclude that the State Board of Ed-

¹ Private correspondence of *State Supt.* Jones, Aug. 19, 1901.

² *Bien. Rep't State Supt.* Jones, 1899-1900, p. 435. There are now 717 *bona fide* high schools in the State.

³ See Webster's *Centralizing Tendencies in State Educational Administration*, pp. 52-54.

ucation has performed its duty in good faith and with wisdom and public spirit.

One member of the State Board of Truancy is designated by the State Board of Education from its own members. It also is constituted the State Library Board.

In respect to the colleges and universities of Indiana, the State Board has little discretionary power. It does appoint annually a board of visitors for the State Normal School¹ and selects five of the eight trustees of Indiana University.² It has no legal control over their policy or their courses of instruction. At various times it has been proposed to extend its authority over all the institutions of higher education in the State.³

The State Board has recently assumed a degree of regulation through its power to grant life State licenses. It has resolved that, upon complying with certain conditions, "all graduates of higher institutions of learning in Indiana, or other institutions of equal rank in other States approved by this Board, which require graduation from commissioned high schools, or the equivalent of the same, as a condition of entrance, which maintain standard courses of study of at least four years, and whose work as to scope and quality is approved by the State Board of Education, shall be entitled to life State licenses to teach in Indiana."⁴ This regulation will have a tendency to raise the standard of, and to secure uniformity in, the curricula of the colleges and universities of the State. The smaller and weaker institutions will not be satisfied to have their graduates in a class below the alumni of the larger and better equipped schools.

¹ *School Law* (ed. 1901), sect. 480.

² *Ibid.*, sect. 498.

³ In 1897 a bill was introduced in the Senate designed to make it unlawful for persons or institutions to confer academic degrees or titles except when empowered to do so by the State Board of Education; but the bill was indefinitely postponed. *Sen. Journ.*, 1897, pp. 337, 751.

⁴ *School Law* (ed. 1901), sect. 24. Note 1.

School officials (local and State) and teachers' associations have repeatedly emphasized the great benefit which would accrue to the public schools from an extension of the powers of the State Board of Education.¹ Among the proposed modifications are included the legalization of their power to inspect and commission high schools; empowering them to direct institutes (county and township) by prescribing the general character of their work and by licensing instructors in county institutes; authorizing them to provide means of determining the educational and professional qualifications of county and city superintendents; making the subordinate officials directly answerable to the State Board and leaving to them only minor details; permitting the Board to adopt and enforce such orders and regulations as in its judgment might seem essential for the best interests of the public schools upon all matters not fully provided for by statutory regulation; and requiring the sanction of the Board to any bill relating to the schools before it should become a law. The strongest argument which the advocates of centralization offer for this extension of power is, that "that part of the work which is directly under the control of the State Board of Education has far outstripped any other part of the general plan. This is true because the State Board is composed of experts in their line and because there has been no perceptible break in the general policy for a number of years."² Many of these recommendations very naturally seem extremely radical to the conservative friends of education, and the expediency of their enactment may properly be questioned.

It has been observed that there are two heads to the

¹ See especially *Biennial Reports of State Supt. Pub. Instr. for 1887-8, 1889-90, 1891-2, 1893-4, 1895-6, 1897-8, 1899-1900, and Proceedings of the State Teachers' Association in Indiana School Journal.*

² *Bienn. Report State Supt. Jones, 1893-4, p. 71.*

school system with, in some cases, conflicting statutory authority.¹ In practice this has not interfered with the harmonious administration of school affairs because of the hearty co-operation of the two authorities. A perfect integration of the system would require the subordination of the State Superintendent of Public Instruction to the State Board of Education, or *vice versa*. The more rational method would seem to be to make the State Superintendent the executive officer of the Board, appointed by it with an indefinite tenure, after satisfactory service for one year. This, of course, could not be done without a constitutional amendment. Such a method of appointment would, moreover, relieve the State of the danger of elevating to this responsible position an incompetent or unworthy man whose nomination might be dictated by political considerations irrespective of his ability and professional interest in the schools. While no disparagement of the persons who have held this office is intended, the danger does occur at every biennial State convention.

The striking thing in the management of the Indiana schools is the extensive discretionary power vested in the officials, from the State Board of Education to the district teacher. The numerous laws upon this subject have not prescribed an infinite number of petty rules and regulations; but have indicated the general lines of administration and then have left to the wisdom and judgment of those intrusted with authority, the responsibility of making the system efficient and constantly developing it. In other words, the system is unusually administrative in its character.

¹ *Bienn. Report State Supt. Vories, 1893-4, pp. 74-5.*

6. CONCLUSION

What conclusions can be drawn from this examination of the administration of the public schools?

In the first place, let us ascertain the theoretical grounds for State control. It is not necessary to offer a justification of free public schools. That question was settled in theory eighty-six years ago by the framers of the first Constitution of Indiana, who declared in that instrument: "Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country being highly conducive to this end, * * * it shall be the duty of the General Assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation from township schools to a State university, wherein tuition shall be gratis, and equally open to all."¹ This sentiment was in substance repeated in 1851.² The interpretation which the Supreme Court has given to these clauses is well shown in the following excerpt: "Common schools, as a whole, are made a State institution—a system co-extensive with the State, embracing within it every citizen, every foot of territory and all the taxable property of the State."³ Unless the common schools, this State institution, are adequately supported by means of an income derived from some grant or endowment in which the State has only a fiduciary interest, the State must provide sufficient resources to maintain them. In Indiana the "magnificent school fund" is a matter of just pride, but the income therefrom constitutes less than one-twelfth of the cost of

¹ *Constitution of 1816*, art. ix, sects. 1 and 2.

² *Constitution, 1851*, art. viii, sect. 1.

³ *City of Lafayette v. Jenners*, 10 *Indiana Rep'ts.* 76-7.

maintaining the public schools.¹ In this State the only practical way of obtaining ample revenue for any purpose is by the exercise of the power of taxation. Whether this is done by a general State levy or by local levies, which must be authorized by the State Legislature, it is the act of the State, provided the levy is for State expenses.* From the citation made above it appears that school expenditures are for State purposes. Now, it is a recognized principle of political science that when representative governments authorize public expenditures there must be a proper accounting in order to show that the money has actually been expended in the way and for the purposes intended. In the matter of the common schools, this requires not merely the balancing of accounts to prevent misapplication of revenue, but also, and much more important, a complete system of supervision of all the work and all the affairs of the school. How else can the State know whether or not in return for this vast expenditure, exceeding \$8,000,000 annually, "knowledge and learning" are "being generally diffused throughout a community" in a way that contributes to the highest welfare of the whole State? Theoretically the State has just ground for its claim to control common school education.

Let us apply the inductive method and see if we can find a justification of central control in the results which have been attained under it. The mistake must not be made of attributing all the advancement during the last half century to centralization alone. Other forces have been at work

¹ The school fund in 1900 amounted to \$10,359,959, which at 6 per cent interest would yield about \$621,600; the total revenue distributed for school purposes for the same year was equal to \$8,021,138. *Bien. Report State Supt. Jones* for 1899-1900, pp.423-4.

* Cooley, *The Law of Taxation*, 2d ed., p. 329 and Goodnow, F. J., *Municipal Home Rule*, pp. 51 and 225.

also. The following statistics illustrate the gradual progress of education in Indiana :

Year.	Total Population.	No. of children of school age.	School enrollment.	Amount expended for schools.	Average length of all schools for school year [days].
1840..	685,866	<i>a</i> 273,784	48,189		
1850..	988,416	<i>a</i> 399,292	161,500	\$377,987	
1860..	1,350,428	<i>b</i> 512,478	303,873	1,376,425	65
1870..	1,680,637	<i>c</i> 619,627	436,736	1,474,000	97
1880..	1,978,301	<i>d</i> 703,558	511,283	4,491,850	136
1890..	2,192,404	<i>b</i> 770,722	512,955	5,572,124	130
1900..	2,516,462	<i>b</i> 756,004	564,807	8,021,138	152

a, Ages, 5-20.*b*, Ages, 5-21.*c*, Ages, 6-21.*d*, Ages, 6-20.

The school enrollment constituted, in 1840, less than 18 per cent. of the children of school age; in 1900 it was nearly 75 per cent. In 1850 17.5 per cent. of the people over *twenty* years of age were illiterate; in 1890 but 6.3 per cent. of the population over *ten* years of age were classed as illiterates. Nothing could demonstrate more forcibly the increased efficiency of the school system.

In respect to the school funds and revenues, one who reads the repeated lamentations of officers cited in the former sections of this chapter,¹ cannot fail to reach the conclusion that centralization has increased the school funds and the available revenue by increasing their safety and insuring their application to the proper ends. We can hardly conceive of a condition to-day similar to that reported by the Auditor of State in 1842. He affirmed that the amount of interest from the different sources which should be paid out annually was \$146,298, and that the amount actually disbursed was \$94,436, leaving a deficit unaccounted for of \$51,862—more than 35 per cent. of the total interest.² The

¹ See pages 44, 46-7, 49, 52, 54, above.

² See page 44 (footnote) above. A member of the Constitutional Convention

present security and confidence when contrasted with the wasteful and fraudulent management of former days cannot be explained by pointing out the general advance in public ideals and integrity. For if we take the same period and compare the administration of the Bank Tax Fund and the Sinking Fund with the management of the Congressional Township Fund, the County Seminary Fund and the Delinquent Tax Fund, we find the same difference. The former were administered by central officers and not a dollar was lost; the latter were under local control which was characterized by "inefficiency, confusion and waste." There is no reasonable doubt, that the presence in each county of the county superintendent and the existence of the State Superintendent of Public Instruction, with their powers of inspection, have annually saved to the school fund thousands of dollars.¹

In the matter of examinations, does it require any argument to prove that the present centralized system of determining the qualifications of teachers is superior to that decentralized method which fifty years ago permitted the majority of voters of a school district meeting to dispense with such legal qualifications of school teachers as they might deem proper? * If the mere statement of the facts does not carry conviction with it, read the testimony of experts on the former pages.

When we come to consider the results of centralization in regard to the control over the course of study we are led to

of 1850-1 declared that "an accurate history of the school fund would show more improvidence and folly in its management than is now often witnessed in connection with any fund, either public or private." *Debates of the Const. Conv.*, 1850-1, vol. ii, pp. 1979-80.

¹ See page 72 above for estimate of the saving effected by the county superintendents in 1873-4.

* See page 87 above.

² See pages 89-91, above.

the same conclusion. Prior to 1865 no law had prescribed what branches should be taught in the schools.¹ Even after the branches required to be taught were specified by statute, there were neglect of certain subjects and lack of classification.² It was not until the State Board of Education took up this question and, with the assistance of representatives of the city and county superintendents, prepared a uniform course of study, that proper correlation and integration were attained. The close articulation between the colleges and universities on the one hand, and the high schools on the other, is the work also of the State Board of Education. This connection has lifted up the whole common school system³ to a higher plane. The State Board of Education in its capacity of a School Book Commission has rescued the State from that chaotic condition described by the Superintendent of Common Schools in 1845,⁴ and from the scandals and corruption connected with the county adoption prior to 1889. The present State contract system has reduced the cost of books from fifty to sixty per cent. and has at the same time improved the quality both in the matter of gradation and contents. "The School Text Book Law has increased the attendance and made the work much more uniform. In fact, it has practically solved the question of uniformity in school work."⁵

The publication of a State manual gave a noticeable impulse to the movement towards a term of uniform length. Superintendent Vories in his report for 1893-4 said that the length of the term had been more nearly uniform throughout the State and had increased greatly.⁶

The value of institutes and reading circles as means of in-

¹ See pages 93-4 above.

² See page 94 above.

³ See pages 98, 129 above.

⁴ See page 99 above (footnote 4).

⁵ *Bienn. Report State Supt. Pub. Instr.*, 1893-4, pp. 62 and 63.

⁶ *Ibid.*, 1893-4, pp. 10 and 11.

creasing the intelligence and efficiency of teachers has been materially enhanced by the thoughtful advice and direction of the State Superintendent of Public Instruction and the State Board of Education.¹

The failure to make local libraries a satisfactory adjunct to the schools was due in part to the lack of central control over their management, and in part to the inefficient local direction. It remains to be seen what progress will be made under the arrangement of the law of 1899.

The present State Superintendent of Public Instruction affirms that the compulsory education law, in the three years of its operation, "has done more for the schools than its promoters anticipated."²

In addition to the influence exerted by the central authorities in the field of administration, they have exercised a wholesome influence over school legislation. The opinion and advice of these expert officials have carried great weight with legislators desirous of promoting the highest educational interests of the State. It is not exceeding the bounds of truth to say that after making due allowance for all other causes, the progress of the public schools of Indiana is due

¹ See pages 105, 106, 108, above.

² In corroboration of this statement he presents the following statistics:

Per cent. of enrollment based upon the enumeration during the operation of the law.....	74.3
Per cent. of enrollment based upon the enumeration during the nine years previous to its enactment.....	67.8
Per cent. of attendance based upon the enumeration during the operation of the law.....	57.5
Per cent. of attendance based upon the enumeration during the nine years previous to its enactment.....	48.1
Per cent. of attendance based upon the enrollment during the operation of the law.....	76.5
Per cent. of attendance based upon the enrollment during the nine years previous to its enactment.....	70.2

Rep't State Supt. Pub. Instr., 1899-1900, pp. 490-1.

more to its centralized administration than to any other influence.

II. SCHOOLS FOR SPECIAL CLASSES.

During the period from 1840 to 1850, we have noticed a tendency towards centralization in the administration of the common schools. Within this same decade a similar movement was seen in the establishment of special State schools for the education of the blind, and the deaf and dumb. These institutions partake largely of the nature of charitable institutions. But in the minds of the legislators who founded them the paramount purpose was to secure a general system of education by providing "for those who are susceptible of an education, but to whom it cannot be imparted by the ordinary means of instruction."¹ The design of these institutions was not to restore sight to the blind or speech and hearing to the deaf, nor to afford an asylum where they might be provided with permanent homes; but to educate these people so as to enable them to earn their own living.

(a) *The Deaf and Dumb.* Governor Wallace in his message in 1838 recommended that provision be made to educate the deaf and dumb at the expense of the State.² The number of such unfortunate persons in the State at that time was estimated at three or four hundred. In 1844³ the "Asylum for the Education of the Deaf and Dumb" was opened with fourteen pupils in attendance. Tuition, board and clothing were free only to those whose parents were unable to defray such expenses. These costs were paid out of the State treasury. In 1848 the doors of the institution were thrown open to all the deaf and dumb of the State.⁴

¹ *Message of Governor Bigger*, 1841, *Doc. Journ.*, 1841-2, *House Rep'ts*, p. 85.

² *Doc. Journ.*, 1838-9, p. 20.

³ *Laws*, 1843-4, p. 36 ff.

⁴ *Laws*, 1848-9, p. 61.

Four years later it was provided that only in cases of extreme necessity was clothing to be furnished by the State to any pupil of the institution; and even then, the State was to be reimbursed by the county in which such pupil resided.¹ This policy of affording board and free tuition by the State to all the deaf and dumb, and free clothing by the county to the indigent pupils, remains to the present day. The superintendent recommended² in 1892 and 1896 compulsory attendance at the Institution of all deaf and dumb children between the ages of six and eighteen for at least seven years.

(b) *The Blind.* In 1847 the "Indiana Institute for the Education of the Blind" was established.³ The State provided boarding and instruction free to the children of all residents of the State; but clothing and traveling expenses were furnished by the parents or guardians of pupils, or, in case of indigence, by the county commissioners if they deemed it expedient. The school began operations with nine pupils. The attendance did not increase rapidly. Eight years after its establishment the trustees reported that not more than one-eighth of the blind in the State had availed themselves of the advantages of the institution. The benefits which it confers have been more generally appreciated in later years.

The advantages derived from this institutional system are so decided that they offset the disadvantages which absence from their homes brings to the pupils. Special methods of teaching are necessary in the instruction of the deaf and

¹ *Rev. Stat.*, 1852, pp. 243, 247.

² *Reports of Supt.*, 1892, p. 15; 1896, p. 15; 1901. Also the *Indianapolis News*, Jan. 17, 1902, p. 4.

³ *Laws*, 1846-7, pp. 41-3.

⁴ *Rep't of Trustees of Institute for the Blind*, 1855, *Doc. Journ.*, 1855, Pt. ii, p. 177. The attendance at that time was only seventy-seven.

blind which would entail a very heavy expense if each blind or deaf child were properly taught at its own home.

(c) *Other Classes.* With a view to realizing more completely that ideal system of universal education, special provision has been made for the instruction of the feeble-minded youth, for the orphans of soldiers and sailors, and for the inmates of the Reform School for Boys, the Industrial School for Girls, the Reformatory and the State prisons. These institutions are so distinctly benevolent or correctional in their purposes that they will properly be considered in the next chapter.

CHAPTER III

CHARITIES AND CORRECTION.

I. THE DEVELOPMENT OF THE SYSTEM OF LOCAL POOR RELIEF PRIOR TO 1890: A PERIOD OF DECENTRALIZATION.

THE act of 1790 which provided for the division of counties into townships, required the courts of general quarter sessions of the peace to appoint annually one or more overseers of the poor in each township.¹ These officers seem to have had no authority to provide relief on their own motion. Their only function was to inform some justice of the peace in case of any distress, whereupon, the justice might take legal means to afford the proper and seasonable aid. Five years later authority in financial matters was first granted to the overseers. A law imposing certain fines stipulated that they should be paid to the overseer of the poor of the township in which the "recusants" respectively lived, for the use of the poor thereof.²

The beginning of a practical system of poor relief was made in 1795. It was by law³ made the duty of the justices of the court of general quarter sessions of the peace to appoint annually "two substantial inhabitants" in each township to be the overseers of the poor. The office was

¹ Chase, *op cit.*, i, p. 108.

² *Laws of the Northwest Territory*, 1795, p. 51.

³ The law was taken from the Pennsylvania code. Its close similarity to the English Poor Law of 1601 is very striking. See *The English Statutes at Large*, ii, pp. 702 ff.

obligatory. For the first time the townships were given a corporate existence, the overseers of the poor being declared bodies politic and corporate, capable of suing and being sued, and receiving and holding gifts or devises to the township for charitable purposes. They had power to levy a poll and property tax for the support of the poor, but the approval of at least two justices of the peace of the county was necessary to make their action effective. A part of the funds thus obtained was to be expended in "providing proper houses and places and a convenient stock of hemp, flax, thread and other ware and stuff for setting to work such poor persons as apply for relief and are capable of working." The remainder was to be used for relieving unfortunate persons who were not able to work. This was the first attempt to classify poor persons who received public aid. The overseers had authority to contract with any one for a house or lodging for keeping and employing the poor, and, with the approval of at least two justices, to apprentice poor children whose parents were dead or unable to support them. The authority of the overseers was restricted by the requirement that two justices of the peace should give their consent before the name of any person could be entered in the "poor book" or any relief be granted. On the day of the annual selection of overseers, the free male inhabitants of the township assembled and chose three freeholders to settle and adjust the accounts of the overseers. The sections defining "legal settlement" were based upon the theory that each township was bound to maintain its own poor.¹ But the

¹ A stranger, coming from any State of the Union or from any township of the Territory, was required to furnish a certificate from the overseer of the poor of the township whence he came, obligating the said township to provide support for the person mentioned, if relief should be required. Upon the complaint of the overseer any justice of the peace might issue a warrant directing the removal of any person not legally settled. Appeals could be had to the justices of the peace at their next general quarter sessions. Chase, *op. cit.*, i, 175-182.

establishment of workhouses in each township proved to be impracticable.

The next legislation on this subject (in 1799) required the overseer to farm out poor persons who were a public charge to the lowest bidder. The farmers of the poor were entitled to keep them at moderate labor. To prevent injustice, the overseer had power to examine into the grounds of any complaint made by, or on behalf of, any pauper; and if the pauper had been insufficiently provided for or ill-treated, it was lawful for him to withhold a part of the compensation. Overseers were required to make returns to the county commissioners, who were authorized to levy a tax equal in amount to that for which the poor were sold.¹

Here was a step toward local centralization. The burden of the public poor was shifted from the separate townships to the county as a whole. This remained the practice until 1897. In 1803 the power to levy the poor tax was transferred from the county commissioners to the court of common pleas in each county;² and two years later the authority to appoint the overseers of the poor was conferred upon the same court.³

The Constitution of 1816 made it the duty of the General Assembly "to provide one or more farms to be an asylum for those persons who, by reason of age, infirmity or other misfortunes, may have a claim upon the aid and beneficence of society; on such principles, that such persons may therein find employment and every reasonable comfort, and lose by their usefulness the degrading sense of dependence."⁴

The General Assembly, in 1818, re-enacted the territorial laws regulating the care of the poor. The only changes

¹ Chase, i, pp. 284-5.

² *Terr. Laws*, 1803, p. 63.

³ *Ibid.*, 1805, p. 15. In 1813 these powers were given to the associate judges of the circuit court. *Ibid.*, 1813, p. 124 *et seq.*

⁴ *Constitution of 1816*, art. ix, sect. 4.

made were the transference to the county commissioners of the authority to appoint for each township two overseers of the poor; and the granting to overseers the power to bind out poor children as apprentices.¹

A privilege still conceded to applicants for aid was first granted in 1821. Poor persons who believed themselves entitled to relief which the overseers refused to grant, were given the right to apply to the board of county commissioners. The latter, if they thought proper, might direct the overseers to put them upon the poor list.² A larger degree of discretion was given to the county commissioners in 1823. They were authorized to grant to paupers of mature years and sound mind, who would from their general character probably be benefited thereby, an allowance equal to the estimated charge of their maintenance. This sum was to be under the immediate control and direction of the recipients.³

The first effort to carry out the constitutional provision relating to the poor, was made in 1821.⁴ Though limited in its application to a single county, it was the practical beginning of the county poor-farm system.⁵ It provided for the establishment of a house for the employment and support of the poor of Knox County. Three directors, one retiring annually, were to be elected by the qualified voters for a term of three years. They were created a "body politic and corporate in law to all intents and purposes whatsoever relating to the poor" of Knox County, and were styled "directors of the poor." They were granted power to apprentice poor children, to employ officers and attendants, and to make rules for the government of the "house". Before going into force these regulations had to receive the

¹ *Laws*, 1817-8, pp. 154-157.

² *Laws*, 1821-2, p. 27.

³ *Laws*, 1822-3, pp. 140-1.

⁴ *Laws*, 1820-1, pp. 102-110.

⁵ The law of 1795 (see p. 143), providing for houses of employment seems never to have been put into operation.

approval of the Circuit Court. The county commissioners were required to provide the sum needed for purchasing land and erecting the necessary buildings. The directors were to account annually to the county commissioners for all receipts and expenditures. They also reported, at least once annually, to the Circuit Court and grand jury of the county a list with the number, ages and sex of the inmates of the house of employment; and also a list of the children bound out as apprentices with the names of their masters and mistresses, and their trade, occupation or calling. They were further required to submit to inspection and examination by such visitors as the Circuit Court might appoint from time to time. One of the directors was to visit and inspect the house once each month. As soon as the buildings were completed, all the poor of each township were to be removed thither; and the office of overseer of the poor for Knox county was abolished thereby. Here was the first attempt to secure regular reports of statistical information and to require official inspection and examination. Indeed, the act seems quite modern in spirit. Within that decade seven other counties¹ were given the same rights with slight qualifications; only permanent charges were to be placed in the county asylum, and the office of the overseer of the poor was to be retained, presumably to furnish relief to those temporarily dependent. In the main, these special laws were successful in their operation, although the act relative to the Knox county asylum was repealed in 1828 and the general laws again made applicable to that county.²

The prevailing way of dealing with the poor was still the farming-out method. The character of the poor relief

¹ The counties of Clark, Harrison, Wayne, Jefferson, Washington, Dearborn and Floyd. *Rev. Stat.*, 1824, pp. 283-4; *Laws*, 1829-30, pp. 7-8; *Special Laws* 1830-1, pp. 6-7.

² *Laws*, 1827-8, p. 69.

system and the consequences of its operation were carefully reviewed by Governor Ray in his message of 1825. After quoting the fourth section of the ninth article of the Constitution,¹ he proceeded to say: "The uniform silence of our legislature on this subject is sufficient to induce a belief that the benevolent provision has not yet received the consideration to which it is entitled. * * * * The existing law for the support of the poor is radically defective in the principles of humanity * * * * as well as in economy of expenditure. * * * * These unhappy objects of public charity are sold like merchandise or cattle in a public market to persons who are generally induced to become their purchasers from motives of gain or avarice, rather than humanity and benevolence." This "mode of relief is calculated to lacerate anew the already wounded sensibility, to increase the sense of degradation, and changes the unfortunate dependent from an object of public charity into a means of private speculation." He recommended "dividing the State into districts of counties, or larger, and making provisions for the establishment of an asylum in each, where under the care of a single superintendent, made responsible for his conduct, the poor, deaf, dumb and unfortunate of the district may be collected; and those of them, of capability, occupied in some useful employment contributory to their subsistence." He believed that such a system would cost little more than one-half the amount expended under the existing arrangement, "besides affording abundantly the milk of human kindness."² A committee of the Senate reported a resolution in favor of an act to divide the State into three districts, in each of which a farm should be purchased to carry into effect the humane principles of the Constitution.³ The bill failed to become a law, but the General Assembly was sufficiently

¹ See page 144 above.

² *Sen. Journ.*, 1825-6, pp. 26-28.

³ *Ibid.*, p. 86.

impressed to call for information from the clerks of the Circuit Courts in respect to the amount of expenditures for poor relief together with the "number and kind of paupers and indigent persons who received charity."¹ The law was disregarded by most of the clerks; but fourteen made return returns to the Secretary of State. These were sufficient to show that the system was expensive.²

The inhabitants of Indiana, acting collectively either as a State or as local communities, were reluctant to impose upon themselves the burden of taxation which was necessary to supply adequate funds for the purpose of poor relief. Moreover, they beheld many thousands of acres of government lands lying unoccupied within the State. In that day of national liberality it did not seem inconsistent nor improper to appeal to the general government for aid. And besides, they had before them the conspicuous examples of Federal generosity in favor of schools and public improvements. Accordingly, the fifteenth General Assembly addressed a memorial to the Congress of the United States, requesting that an act be passed granting one section of land for each county in the State which, or the proceeds of which, should be applied to erect asylums and provide farms to receive all persons found to be objects of charity; two sections to be applied to benefit the deaf and dumb within the entire State, and also one section to erect and sustain a "lunatic asylum." "Indiana repudiates the idea of selfishness," and wishes only "to take upon herself the responsibility of an agent, empowered to administer consolation to all whom casualty or misadventure may render dependent on benevolent protection."³ As a further ground for asking this donation, the memorial pointed out that many of the unfortunates in the State were

¹ *Laws*, 1825-6, p. 49.

² *House Journ.*, 1826-7, pp. 60-1.

³ *Special Laws*, 1830-1, pp. 188-9.

newly-arrived immigrants from the older States, who, being unacclimated, quickly succumbed to disease.

Fortunately they did not wait for Federal assistance. The Revised Statutes of 1831 contain an act of general application authorizing county boards, if they deemed it advisable, to buy land and erect buildings thereon for the support and accommodation of the poor. Persons who had become permanent charges as paupers on the counties were to be removed to such asylums, and to be kept at such employment as seemed advisable. The county boards were empowered to appoint one or more directors of the institutions, who were to make reports of their accounts and proceedings to the appointing board. In counties having no poor asylum the law still permitted the farming out of the poor by the overseers, who were required to report to the same board.¹

The system of public poor asylums seems not to have been entirely satisfactory. We find special acts granting the commissioners of certain counties² authority to employ some humane person to receive into his care and custody all permanent county charges, and to take such measures for their employment as the board of commissioners should direct. The county boards retained the rights to require bonds and reports from the contractors and to inspect the asylums annually.³

At that time there existed in Indiana five methods of dealing with the poor: the "poor asylum" system, which meant the gathering of the poor in asylums or farms under the superintendence of county officials; the "contract system," which signified a similar congregation under the control of a private person paid by the county; the "farming-out" system, under which the poor, individually, were placed in the care of private persons who received a compensation;

¹ *Rev. Stat.*, 1831, pp. 286-7.

² Floyd, Knox and Daviess.

³ *Laws*, 1831-2, pp. 20-1; *Ibid.*, 1832-3, pp. 27-8; *Ibid.*, 1834-5, p. 65.

the "apprentice system" for minors; and the "outdoor relief," under which aid was furnished by the township trustees or county commissioners to persons not cared for in any of the ways mentioned above.

For nearly fifty years from 1831, there was almost no progress towards a scientific solution of the problem of pauperism. An attempt was made to improve the class of persons responsible for the care of the poor by constituting the justices of the peace of each township *ex-officio* overseers of the poor.¹ Evidently this experiment was not a success, for in 1852 the trustees of the several civil townships were declared overseers of the poor.² An ineffective plan of local inspection was tried in 1843 and again in 1852.³ It was during the decade from 1840 to 1850 that the first State institutions for the care and education of the dependent classes were established. But along with this centralization of administration there was no evidence of the conception of a central control or supervision over the administration of local charity.

Juvenile Dependents. Prior to 1875, with the exception of the Soldiers' and Sailors' Orphans' Home, there was no general provision for the care of indigent children in any public institutions other than the county asylums. A few private orphan asylums had been established. The Widows' and Orphans' Asylum of Indianapolis was incorporated in 1851.⁴ A number of years later the common council of Indianapolis and the board of commissioners of Marion county were empowered to make appropriations of money or supplies for the care and support of the inmates of this asylum. In case either corporation made such an appropriation, it was entitled to be represented on the board of

¹ *Laws*, 1832-3, p. 28; 1842-3, pp. 4-5; 1843-4, p. 48.

² *Rev. Stat.*, 1852, i, p. 401.

³ See page 175 below.

⁴ *Local Laws*, 1850-1, pp. 375-6.

directors of the institution.¹ In 1875 the name was changed to 'The Indianapolis Orphans' Asylum.'"²

This experiment proved to be satisfactory after a fair trial. In 1875 the policy was made general; and at the same time a greater degree of control over such institutions was secured. The board of commissioners of any county in which was located an orphan asylum, maintained by a voluntary association, was authorized, after due examination as to the number of orphan children in the asylum, to allow the institution the sum of twenty-five cents per day for each orphan child cared for by it, that would otherwise have been a charge upon the county and a proper subject for the poor asylum. One member of the county board was *ex-officio* a member of the board of officers of such association. It was made the duty of the managers to bind out any orphan child, whenever that could be done on such terms as would secure for the child proper maintenance and education; and to see that the child was properly treated.³ This law recognized the duty and expediency of separating the dependent children from the older and hopeless paupers, and the necessity of subjecting private orphan asylums to public examination. But the law was very defective.

There was still a large number of inmates of county asylums who were being reared in the midst of associations calculated to prevent or impede the chances of their future usefulness. It was, therefore, provided in 1881 that county commissioners should have the authority to employ a woman, who would be willing to accept in some convenient and suitable place the charge of all pauper children of sound mind between the ages of one and sixteen years, that might be in the county asylum. It was the matron's duty to care for the children and furnish them proper instruction.

¹ *Laws*, 1867, p. 230.

² *Ibid.*, 1875, p. 90.

³ *Laws, Reg. Sess.*, 1875, p. 169-170.

Earnest effort was to be made to find homes for them. The board of commissioners had the right to select a committee of three to visit and examine the condition of the orphanage at least quarterly.¹ In the operation of this plan the following imperfections were disclosed:

(1) Insufficient and unsuitable work, entailing habits of laziness and idleness in the children, and lack of training for a self-supporting life in maturity.

(2) Failure in, and indifference to, placing out the children in suitable homes, due (1) to objections of parents and guardians who ought to have supported the children, and (2) to the selfish interest the matron had in keeping them in her "home."²

The next experiment was also first tried in Indianapolis. A law of 1889 provided that in all townships having a population of more than 75,000, there might be created a board to be known as "The Board of Children's Guardians of Township." The members were to be appointed by the Circuit Court, and were to serve without pay. They were subject to removal by the Circuit Court for misconduct or neglect of duty upon proper showing before the court after notice. This board was to have the diligent supervision of the neglected and dependent children under fifteen years of age, and had power to take under their control any children abandoned, neglected, or cruelly treated by their parents, child beggars, incorrigibles, and children of drunkards or persons unfit to care for them. They had power to provide a temporary "home" for them, or to commit, by leave of the Circuit Court, to the House of Refuge or Indiana Reformatory for Girls.³ Two years later the provisions of the law were extended to the entire county of Marion. The

¹ *Laws, Spec. Sess.*, 1881, p. 580.

² *Reports Board of State Charities*, 1891, pp. 88-9; 1893, pp. 75-6.

³ *Laws*, 1889, pp. 261-3.

powers and duties of the board were enlarged. The county commissioners were required to see that a house suitable for their accommodation was provided, and to make a *per diem* allowance for the keeping of each child.¹ At the next session of the General Assembly the law was extended to counties having a population of 50,000.² It then applied to four counties. The results were very satisfactory. The moral influence of the board of children's guardians, backed by the law, caused many families to clean up physically and morally.³ In 1901 it was made permissive in all counties.

The recent development in the methods of local charitable and benevolent work, and its connections with the central administration, can be more clearly presented in a discussion of the supervisory powers of the Board of State Charities. The further consideration of this topic will therefore be deferred.⁴

2. THE DEVELOPMENT OF STATE CHARITABLE INSTITUTIONS.

EXAMPLES OF CENTRALIZATION.

The half century following the year 1831 showed little progress in the local care of the dependent. The legislation of that period was often special in its application, incomplete in its details and experimental in its purpose. There was, however, decided advancement in the method of caring for certain special classes of unfortunates. For many years there had been a growing conviction that the general poor laws did not provide the proper relief for certain persons who required peculiar treatment because of physical or mental infirmities. Such treatment could be given only in central institutions under the direct control of State officials. This was the beginning of the centralized system which exists to-day.

¹ *Laws*, 1891, pp. 365-7.

² *Laws*, 1893, p. 282.

³ *Rep't Bd. State Char.*, 1898, p. 69.

⁴ See below, sect. 4, vi.

The blind and the deaf and dumb were the first classes to receive some specialized form of aid. As the institutions¹ founded for their improvement have been considered under the subject of "Schools," it is not necessary to repeat the discussion here.

I. *The Insane.* As early as 1815, and again in 1818,² insane persons having no means of support, had been declared entitled to all the benefits of the law providing for the relief of the poor. But there was no pretense of adapting methods of treatment to the peculiar necessities of this class.

Not infrequently insane persons were a source of danger to the people of their community, and it was necessary to provide some protection. In 1840³ it was made the duty of a justice of the peace, after a hearing before a jury, to appoint some suitable person to take charge of any dangerously insane person. The compensation for such service came out of the county funds.

When the seat of government was established at Indianapolis, from the lands granted by Congress, a lot of ample size was reserved by the State for the purpose of a "Lunatic Asylum." Up to 1844 nothing had been done to carry out the object of the reservation. "In all legislation respecting the insane they had only been regarded as incapable of self-government."⁴ In the general revenue acts of 1844 and the years immediately following, was included a provision for the levy of a tax to create a fund with which to establish a "lunatic asylum."⁵

In 1848 the Indiana Hospital for the Insane was opened for the reception of patients and provision for its manage-

¹ Opened in 1844 and 1847.

² *Terr. Laws*, 1815, pp. 66-68. *Laws*, 1817-18, Jan. 22, 1818.

³ *Laws*, 1839-40, p. 72.

⁴ *Message of Governor*, 1841. *Doc. Journ.*, 1841-2, *House Reports*, p. 85.

⁵ *Laws*, 1843-4, p. 50; 1844-5, p. 50; 1845-6, p. 65; 1846-7, p. 48.

ment was made by law. A board of six commissioners, elected by joint *viva voce* vote of the General Assembly, was given general control and management of the hospital, with power to appoint the superintendent, officers and attendants. Full annual reports were required from the superintendent to the commissioners and Treasurer of State; and from the commissioners to the General Assembly. Admission was offered to insane (not idiotic) persons having legal settlement in the State. If the number of applications for admission were greater than could be received, preference was given first, to recent cases; second, to chronic cases showing prospect of recovery; third, to applicants of longest standing; but each county was entitled to its just proportion. The inmates were to be supported and to receive medical treatment at the expense of the State. Each county was required to defray the traveling expenses of patients sent from it, and to see that proper clothing was supplied to them.¹

In 1864 an inquiry was made as to the number of insane in the State besides those in the hospital. The figures disclosed the fact that not thirty per cent. of those alleged to be of unsound mind were in the Hospital for the Insane.² The next year a special appropriation was made for the erection of a building for the permanent custodial care of the incurable insane.³ The State thus recognized that it owed a duty not only to the demented who might be restored to sanity, but also to the hopelessly insane. These wards could be more carefully and economically cared for in State institutions than anywhere else. Subsequently the incurables were discharged to make room for more recent cases. After repeated recommendations for increased accommodations

¹ *Laws*, 1847-8, pp. 84-7.

² *An. Rept. Supt. Hosp. for Insane*, 1864, *Doc. Journ.*, Pt. i, p. 381-2.

³ *Laws, Spec. Sess.*, 1865-6, pp. 199-200.

had been submitted, the capacity of the institution was doubled by the construction of a separate department for women in 1875,¹ and provision was made for the erection of three additional hospitals in 1883. The rules and regulations governing the old hospital were applied as far as possible, but it was specifically declared that no patient should be discharged from the new hospitals until permanently cured.² The number of applicants has increased beyond the capacity of the hospitals. In the central hospital district we find at present the incurables discharged to make room for the recent and possibly curable cases. In the three other districts, under the law, the incurables must be retained even if this compels the rejection of the possibly curable cases. It is safe to say that fifteen per cent. of the insane in the State are maintained (if not neglected) outside of the State hospitals.³ The condition of these persons appeals very strongly to the sympathy of the humane. Innumerable requests for the care and support by the State of all the insane, curable and incurable, have been made for fifty years by superintendents and commissioners of the hospital,⁴ by governors,⁵ legislative committees,⁶ and by private individuals. Still no adequate arrangements have been made.

II. *Dependent Soldiers and Sailors.* One of the results of the Civil War was a stimulation of the policy of furnishing State support to certain dependent classes. This grew

¹ *Laws, Reg. Sess.*, 1875, pp. 84-7.

² *Laws*, 1883, p. 164.

³ *Report of Board of State Charities*, 1900, pp. 61-3.

⁴ *Rep'ts Com'r of Hosp. Ins.*, 1853, pp. 8, 22; 1854, *Doc. Journ.*, p. 405; 1855, *Doc. Journ.*, Pt. ii, pp. 48-50; 1857, *Doc. Journ.*, Pt. ii, p. 120; 1861, *Doc. Journ.*, 1860-1, Pt. ii, p. 40; 1872, p. 30; 1874, p. 18.

⁵ *House Journ.*, 1872, p. 12.

⁶ *House Journ., Reg. Sess.*, 1861, pp. 661-2; *House Journ.*, 1875, pp. 993-6; *Sen. Journ., Reg. Sess.*, 1861, p. 577.

naturally out of the deep sense of gratitude towards the defenders of the Nation. It is also possible that the increased power of the Executive Departments of the Federal Government and of the State during the war, made the people more willing to submit to this larger centralization in the State administration.

In the very first year of the war the authorities of counties, cities and towns were given power to levy a tax, and to appropriate money for the protection and maintenance of the families of volunteers in the armies of the United States and of the State of Indiana.¹ There was no central supervision over the administration of this law. In 1865 an act was passed levying for two years a State tax to provide a fund for the relief and support of the sick and the wounded soldiers in hospitals, and the families of soldiers, seamen and marines who were deceased or serving in the army of the United States. The final distribution of this State fund was left to the township trustees. In case the trustees and the county commissioners failed to perform their duties on account of neglect, malconduct or disability, the Governor had the power to appoint suitable persons to carry the law into execution.² The meaning of the law was obscure because of defects and inconsistencies in its provisions. In December of the same year it was repealed and provision was made for the disposition of any funds remaining still in the hands of county officials.³

A Soldiers' Home was established at Indianapolis during the war by private contributions under the auspices of the Sanitary Commission. It was intended primarily as a temporary home for the sick and wounded soldiers passing through Indianapolis on their way home. A similar institu-

¹ *Laws, Spec. Sess.*, 1861, p. 22.

² *Laws, Reg. Sess.*, 1865, pp. 93-7.

³ *Laws, Spec. Sess.*, 1865, pp. 59-61.

tion was founded in May, 1865, for the care of dependent soldiers from Indiana. Governor Morton in 1865 called the attention of the General Assembly to "the necessity for the speedy establishment of an institution in which Indiana soldiers and seamen disabled by wounds or disease contracted in the service of the United States, shall be cared for and maintained during the continuance of their disabilities." He referred to this voluntary association and urged upon the Legislature the duty of not leaving this institution to the uncertainty of voluntary contributions. According to the memorial of the officers and directors of the Home, the number of disabled soldiers in Indiana was estimated at five hundred, and the number of orphans at one thousand.¹ Again in 1867 Governor Morton made an appeal for the care of the disabled soldiers. He said: "The support furnished by charity would be precarious and uncertain, and justice, humanity and the honor of the State forbade that these men [the disabled soldiers] should suffer for the comforts of life or find that the poor-house and the society of paupers should be the end and reward of their campaigns."²

At that session "The Indiana Soldiers' and Seamen's Home" was established by law. It was placed under the control of a board of three trustees, elected by the General Assembly for a term of six years.³ Two years later annual reports to the Governor were required and the trustees were made the legal guardians of all children admitted.⁴ The in-

¹ *House Journ., Spec. Sess.*, 1865, pp. 29-30, 100.

² *Message, House Journ.*, 1867, pp. 35-6.

³ *Laws*, 1867, pp. 190-193.

⁴ *Laws, Spec. Sess.*, 1869, pp. 119-120. Admissions to the Home were fixed in the following order: (1) Totally disabled soldiers and seamen; (2) Partially disabled soldiers and seamen; (3) Orphans under fifteen years of age of soldiers and seamen, without father and mother; (4) Orphans under fifteen years whose mothers were living; (5) Widows of soldiers and seamen.

stitution was not very heartily supported.¹ In 1871 the building devoted to the use of the soldiers was destroyed by fire. This necessitated the closing of that department, and the inmates² were transferred to the National Asylum at Dayton, Ohio.

For almost twenty-five years there was no provision for the soldiers as a distinct class. In his message of 1895 Governor Matthews urged the propriety of making special provision for them. He estimated the number of old soldiers maintained in the poor houses of the State at three hundred and fifty.³ In that year the "State Home for Disabled and Destitute Soldiers, Sailors or Marines, and the Wives and Destitute Widows of such Soldiers, Sailors or Marines," was established at La Fayette. The institution is under the management of a bi-partisan board appointed by the Governor and removable by him for cause stated in the order. They must all be honorably discharged soldiers or sailors. Provision is made for the erection of buildings by the State, and the board of county commissioners of each county is authorized to erect at its expense a cottage upon the grounds. Admission is granted to all honorably discharged soldiers, sailors or marines who have served the United States in any of its wars, who have been residents of Indiana one year immediately preceding the time of their application and who may be disabled and destitute; also to the wives and destitute widows, over forty-five years of age, of such veterans.⁴

III. *Dependent Orphans of Soldiers and Sailors.* It has already been stated that with the founding of the Soldiers' Home in 1867, the institution was made a refuge for the

¹ See *Message of Gov. Baker, 1871, Doc. Journ., 1870-1, vol. ii, p. 33.*

² Forty-two in number.

³ *House Journ., 1895, p. 60.*

⁴ *Laws, 1895, pp. 40-4.*

orphans of soldiers and seamen. Indeed, this was its most important feature from the beginning. After the removal of the soldiers to the National Soldiers' Home, the management insisted that there was still necessity for the maintenance and enlargement of the orphan department. They urged that when the time should come that the orphans of the soldiers would be insufficient to fill the institution, the destitute orphan children then in the county asylums in large numbers should be given a home there.¹ The institution was continued under the name of the Soldiers' and Sailors' Orphans' Home.

The purposes of the institution are (1) to support the destitute orphans and children of soldiers and sailors, (2) to afford them opportunity to acquire a fair education, and (3) to teach them some trade or industry by means of which they may be self-supporting.

IV. *The Feeble Minded.* While provision had been made by the State for the education of the blind and the deaf and dumb, and for the treatment of the insane, there was a large class of unfortunates for whom nothing had been done. The laws did not permit the admission of idiots or imbeciles to the Hospital for the Insane. As most of this class were also indigent, they constituted a considerable proportion of the "poor-house" population.

Forty years ago this question received consideration in the House of Representatives. But the committee, while convinced of the feasibility and utility of educating this class of persons, felt it necessary to report that no enterprise of the kind should be entered upon at that time because of the embarrassed state of the public finances.² Ten years later another proposition met a similar fate. In 1873 the Gov-

¹ *Reports of Trustees and Superintendent of the Soldiers' and Seamen's Home for 1872*, pp. 5, 6, 16, 17-19.

² *House Journ.*, 1861, pp. 717-8.

ernor recommended an experiment in this direction. He insisted that there was an urgent necessity for the establishment of a school for the education of idiotic and feeble-minded children.¹

In 1879 public sentiment had reached the point where it demanded some action. Provision was made for the organization and support of an Asylum for Feeble-Minded Children. The management was entrusted to the same board which had the control of the "Soldiers' and Sailors' Orphans' Home." It was the duty of the board of county commissioners to apply for the admission of any feeble-minded child that had no living sane parent or guardian in Indiana. Where the parents were able to do so, wholly or in part, they were required to support the child or children whose admission they applied for: otherwise the support was furnished by the State.² The latter class constituted ninety per cent. of the inmates.³

Public sentiment evidently did not approve of the union of these two institutions under one management. As the experiment had been amply justified by its results, provision was made for a separate school at Fort Wayne. The name was changed to the Indiana School for Feeble-Minded Youth. The management is placed in the hands of a bipartisan board of trustees, who are appointed by the Governor and are removable by him at any time, for cause stated in the order of removal. Feeble-minded, idiotic, epileptic and paralytic children under sixteen years of age are admitted when proper application is made. Under the law of March 8, 1901, the board of trustees are required to set apart a portion of the institution to be known as "the

¹ *Message of Governor Baker, Doc. Journ., 1873, p. 8.*

² *Laws, Spec. Sess., 1879, p. 76.*

³ *Rep't of Supt. of the Asylum for Feeble-Minded Children, 1880, p. 9.*

custodial department for adult females," for the care of dependent feeble-minded women who are over sixteen and under forty-five years of age. Such persons are committed only upon the order of the Judge of the Circuit Court after public hearing.¹

That portion of the institution designed for the care of children is divided into two distinct departments: one, industrial, for the children capable of improvement, in which are taught the common school branches and manual and industrial training; the other, custodial, an asylum for low-grade feeble-minded, idiotic or epileptic children, in which special attention is given to mental, physical and hygienic treatment. The grades are kept separate. The costs of transmission to the asylum are defrayed by the counties or by the applicants. The expenses of support are paid by the State, except when parents or guardians wish to enter children for treatment, training or improvement; in such cases the applicant must support the child.²

Those who expect great things from the school in the way of education are sure to be disappointed. According to the opinion of those most capable of judging, it is doubtful if ten per cent. of the children sent there can ever make sufficient advancement to become self-controlling citizens.³ While this is true, it is also claimed with good reason, that probably a majority of them may be trained so as to become entirely self-supporting under the control and direction of the institution. Still another class, though not so capable, may perform much useful labor. So the institution has become not merely a school for the training of the feeble-minded youth, but "a permanent home for all its graduates who

¹ *Laws*, 1901, pp. 156-8.

² *Laws*, 1887, pp. 46-53; 1889, pp. 129-133; 1901, pp. 156-8.

³ *Rep't Bd. State Char.*, 1893, p. 56.

need the care and protection which, for most of them, only it can give."¹

V. *Other State Institutions Proposed.* As further evidence of the growing disposition to provide for the unfortunate in State institutions, when that can be done most efficiently and economically, mention will be made of some recent proposals looking to that end. As early as 1852 it was stated, that a part of the ultimate plan of the management of the Institute for the Blind was to offer permanent employment to pupils who wished to remain after completing their course.² Little interest was taken in this plan until recently. In 1895 and 1899 bills for an act to provide for the establishment of an industrial home for the blind were introduced in the Legislature, but failed to pass.³

Many eminent students of social science maintain the opinion that it is the duty of the State to extend its protection and its reformatory and restorative influence to the unfortunate class of inebriates. The views of these philanthropists are well set forth in the following extract from the Report of the Superintendent of the Hospital for the Insane: "The State should regard every person who has not sufficient moral inclination or will power to refrain from habitual intoxication, as of unsound mind, and should assume guardianship of such persons under proper restrictions and limitations with a view to, (1) the restoration of the citizen; (2) the protection of society; (3) the self-sustenance of the individual."⁴ Since 1861 several bills have been introduced in the General Assembly to provide for the establish-

¹ *Rep't State Supt. Pub. Instr.*, 1897, pp. 195-6.

² *Rep't Supt. of Institute for the Blind, Doc. Journ.*, 1852-3, Pt. ii, p. 132.

³ *Sen. Journ.*, 1895, pp. 175, 782.

⁴ *Report of Supt. Hosp. for Insane*, 1872, p. 30.

ment of an inebriate asylum under State control; but none has been favorably acted upon.²

In 1895 bills were introduced in both houses proposing to establish a State school for instructing dependent and neglected children before having them placed in private families.³

A bill for the establishment of a village for epileptics would doubtless have been enacted into a law in 1901, had the situation not been complicated by the demands made for other heavy appropriations.

Nearly fifty years ago Governor Wright expressed the opinion that when the building (then under construction) for the education of the blind, was finished, "we shall have completed the circle of the benevolent institutions of the State, which form its pride and honor."⁴ To-day there is probably no one in Indiana who has seriously studied the complex problem of charity and correction that would indorse this optimistic judgment. The need of further differentiation between the local and central administration of charity is being more and more clearly seen.

3. THE DEVELOPMENT OF THE PENAL SYSTEM PRIOR TO 1890.

I. *Period of Decentralization.* One of the first legislative acts of the Governor and Judges of the Northwest Territory was the adoption of a law defining crimes and fixing penalties.⁴ It sanctioned the following punishments: death, imprisonment in gaol, whipping, exposure in the pillory, forfeiture of estates, fines, restitution, binding out at labor

¹ *House Journ.*, 1861, *Reg. Sess.*, pp. 377, 788; 1895, pp. 295, 684; 1897, pp. 374, 883. *Sen. Journ.*, 1861, p. 707; 1895, pp. 85, 846. See also *Rep't Directors Ind. State Prison North*, 1892, p. 7.

² *House Journ.*, 1895, pp. 88, 349; *Sen. Journ.*, 1895, pp. 72, 387.

³ *Message, Doc. Journ.*, 1852-3, Pt. i, p. 32.

⁴ Chase, *op. cit.*, i, p. 97.

and incapacitation from giving testimony, serving as juror or holding any office. In 1795¹ and 1798² there were added to this list commission to the workhouse at hard labor and the sale of the services of an offender for a period not to exceed five years.

In the earliest days the guard-houses of the forts were occasionally used for the detention of prisoners.³ It was in 1792⁴ that the Legislature first directed court houses, jails, pillories, stocks and whipping posts to be erected in every county not having the same already established. Evidently some of these instruments and institutions had been doing service before their use was legally authorized. They were put in charge of the sheriff of the county. The materials,⁵ plans and dimensions of jails were to be determined by the judges of the court of common pleas.⁶ But these officers did not have full discretion. The law required separate apartments for debtors and for persons charged with, or convicted of, crime. Although each county was required to defray the expense of erecting and repairing such buildings, the Governor and Judges of the Territory had an important check upon the amount of expenditures. An estimate of the probable cost was submitted to these officers, who directed the raising of such part of it as they deemed necessary.

At the same time an act was passed for the better regulation of prisons.⁷ It was made the duty of the justices of the court of quarter sessions of the peace at the beginning of each session, to inquire into the state and sufficiency of

¹ Chase, *op. cit.*, i, p. 146.

² *Ibid.*, p. 205.

³ *St. Clair, op. cit.*, ii, pp. 219-222.

⁴ Chase, *op. cit.*, i, p. 122.

⁵ The early jails were almost always made of logs. One of these is still used.

⁶ In 1799 this authority was given to the court of general quarter sessions. Chase, i, p. 275.

⁷ Chase, *op. cit.*, i, pp. 123-125.

prisons and the condition and accomodation of prisoners. This examination must have been intended chiefly to insure the security of the jail. For in those days not much consideration was paid to the comfort and convenience of prisoners. The law required public provision of "meat and drink" for only those prisoners who had no means of supplying themselves; and these, except in the case of criminals, were required to reimburse the sheriff upon their release. All other occupants of the jail were furnished at public expense with only "daily bread and water." The arrangements seem to have been inadequate; for Governor St. Clair, in 1798 and again in 1799, complained of the inconvenience which had been experienced from the want of sufficient jails in the several counties.¹ The early laws indicate the prevalent harshness towards offenders against the public order. The penal system was deterrent and retributive; not correctional and reformatory. Little sympathy was wasted upon the criminal or even the unfortunate debtor. The management of institutions was regarded almost wholly as a matter of local concern and, except over the expenditure for county buildings, no attempt at central control was made. There was almost no immediate change made upon transition to statehood.

The provisions in the Constitution of 1816 relating to a system of correction are found in Articles I and II, where it is declared, that no person confined in jail shall be treated with unnecessary rigor; ² that no cruel and unusual punishments shall be inflicted; ³ that all penalties shall be proportioned to the nature of the offence; ⁴ and that it shall be the duty of the General Assembly as soon as circumstances will

¹ *St. Clair*, ii, pp. 431, 456.

² *Constitution*, 1816, art. i, sect. 12.

³ *Ibid.*, art. i, sect. 15.

⁴ *Ibid.*, art. i, sec. 16.

permit to form a penal code founded on the principles of reformation, and not of vindictive justice.¹

The act of January 21, 1818, re-enacted the former territorial laws with slight modifications.² The State supervision over the cost of public buildings was abandoned. The authority to erect jails was granted to towns in 1824³ and to cities in 1852.⁴ The common council of Lafayette was in 1839 empowered to erect and provide for the support of a workhouse for the punishment of offenders against the ordinances of the town.⁵ It was forty years before this method of dealing with misdemeanants was made applicable by a general law to all counties.⁶

II. *The Period of Centralization and Differentiation.* (a) *The State Prison.* The first important step tending towards the centralization of the penal system was taken in 1821.⁷ The General Assembly in that year appointed certain persons who were to constitute a board of managers for building and governing a prison to be located at Jeffersonville. The board was granted power to fill vacancies in their own body; to make their own rules and regulations for the government and employment of convicts, and to appoint an agent and other officers. The agent was vested with the direct management of the institution, and all business was to be transacted in his name. He was required annually "to lay an account of his proceedings under this act before the General Assembly." His books were to be examined each month by the managers, who were enjoined to remove the agent or any other officer guilty of misconduct. The agent, with the consent of the managers, was authorized to contract

¹ *Constitution*, 1816, art. ix, sec. 4.

² *Laws*, 1817-8, pp. 218-222.

³ *Rev. Stat.*, 1852, i, p. 211.

⁴ *Laws, Spec. Sess.*, 1879, pp. 247-9.

⁵ *Laws*, 1820-1, pp. 24-29.

⁶ *Rev. Stat.*, 1824, p. 417.

⁷ *Spec. Laws*, 1838-9, p. 27.

with the Jeffersonville and Ohio Canal Company for the employment of able-bodied convicts in labor on the canal. Persons thereafter convicted of any offense for which under the existing laws they would have been liable to punishment by stripes, were to be imprisoned and confined at hard labor. Three thousand dollars, arising from the sale of lots at the seat of the government, were appropriated towards building the prison.¹ It is evident from a reading of the act that the State was relying in part upon subscriptions by private individuals to complete the building fund. After deducting all expenses of the institution the State's share of the earnings of the convicts was to be invested in canal stock for the benefit of the State; the share of earnings belonging to individuals was to "be apportioned in such manner as the managers may direct their agent to contract with such individuals on their subscribing." The privileges granted by the act were to continue for eight years; provided, the prison were ready for the reception of convicts by October 1, 1821, and, provided, a subsequent legislature did not establish it as a permanent State prison by buying out the interest of the subscribers.²

One cannot escape the conviction that the chief motive back of this act was to provide labor for the construction of the Jeffersonville and Ohio Canal, of which the State was part owner. Its leading purpose was speculative and not reformatory or protective. The degree of centralization secured by this law was really less than it appeared. For while certain prisoners were gathered together into one place, their entire discipline and employment were surrendered to this semi-private corporation. The terms of imprisonment were fixed by the Legislature just as the degrees of other punishments.

¹ During the next five years small appropriations were made for defraying the expenses of the prisons. *Laws*, 1821-2, p. 91; 1822-3, p. 129; 1823-4, p. 95.

² *Laws*, 1820-1, pp. 26-7.

Owing to the unsatisfactory results of the experiment, the board of managers and the agency were abolished in 1824. The Governor was authorized either to appoint a superintendent, to whom the whole management, government and control of the prison should be entrusted; or to let out the prison under contract for a period of three years. The superintendent or contractor was required to transmit quarterly to the Secretary of State full accounts of the prison. The Governor had authority to appoint persons to examine the prison thoroughly and to report to him. The superintendent was required to keep a book for the entry¹ of full descriptions of the prisoners and to send a transcript of it monthly to the Secretary of State.²

The second alternative was chosen and an agreement was entered into which seemed very satisfactory to the executive. The contractor undertook to be at the whole expense of keeping the convicts and to pay to the State in addition the sum of \$1,650,—\$850 of which were to be expended in improvements. "These terms are highly favorable to the State, and are another proof in favor [?] of this mode of punishment, and of the judicious location of the prison."³

In that day the number of convicts in the State Prison was small both relatively and absolutely. The population was widely scattered and the criminal element was not large. Offences were frequently punished by "regulators" without resort to the courts. Offenders convicted before the courts were usually punished by death, whipping or imprisonment in the county jails. The cost of transportation of persons to the State Prison was another factor which kept down the

¹ The entry included the name, trade or occupation, age, size, complexion and complete description of every prisoner, day of entry, day of expiration of term of offence, county from which sent, and place of birth.

² *Rev. Stat.*, 1824, pp. 395-400.

³ *Message of Governor*, 1828, *Sen. Journ.*, 1828-9, p. 18.

number confined in it. The number reported to the House of Representatives for October 31, 1830, was but thirty-four, of whom ten were under twenty-one years of age.¹ This means that but one person in ten thousand was confined in the State Prison.

The leasing system proved very unsatisfactory. The House committee on the State Prison reported in 1840, that from all that could be gathered from the report of the visitor (which the committee deemed very defective and unsatisfactory) and from the letters of the superintendents themselves, they were compelled to believe that the State Prison was under very bad management in many particulars. There was no regular system of discipline and no means in practice for the improvement of convicts. The committee did not hesitate to say "that the present plan of leasing out . . . the State prison, and the unfortunate convicts . . . is the most ill-advised and pernicious of any that has prevailed in this country or elsewhere." They recommended that provision be made for a more rigid inspection and examination and that, after the expiration of the lease, the prison be placed under the management of inspectors with such restrictions and discipline as would secure a more humane administration.² For the next fifteen years similar reports were made almost annually by the visitor of the prison, the Governor or legislative committees. The financial condition of the State did not, in the opinion of the legislators, justify so great an expenditure as any change would necessitate.³ The evils continued to increase in spite of provisions for closer inspection. In the superintendent's report for 1841, the startling admission was made, that one-eleventh of the whole number had died within a period of four months. He

¹ *House Journ.*, 1830-1, pp. 207-211.

² *House Journ.*, 1839-40, p. 833-4.

³ *Doc. Journ.*, 1840-1, *House Rep'ts*, p. 322.

attributed this in a great degree to a want of proper ventilation.¹

In 1846 the policy of leasing the prison was reaffirmed; but the internal management and discipline of the convicts were placed in the hands of a warden, elected by the General Assembly for a term of three years. He was removable at any time by the Governor for violation of his duties and was required to make annual reports to the Legislature.²

In 1855 the system of leasing the prison was abandoned. The institution was placed in the hands of three directors elected by the General Assembly for a term of three years. They selected the warden, who managed the prison under rules and regulations made by the directors and warden.³ The management in 1857 was given the right to hire out the convicts to contractors.⁴ Though not an ideal system, this was an improvement upon the old; for it placed the complete management under State officials.

As the State increased in population, the capacity of the prison became insufficient, and in 1859 the construction of another was authorized.⁵ When it was occupied in 1860, it was placed under a separate management.

In 1861 a system of commutation was introduced in both prisons under which the term of service of each convict might be shortened by deductions made for good behavior.⁶ This law had a very salutary effect upon the conduct of prisoners.

(b) *The Reform School for Boys.* One of the evils connected with the prison system was the indiscriminate mingling of juvenile offenders and hardened and vicious criminals. This had been early recognized.

¹ *Rep't Supt., Doc. Journ., 1841-2, House Rep'ts, p. 504.*

² *Spec. Laws, 1845-6, pp. 35-7.*

³ *Laws, 1855, p. 195-201.*

⁴ *Ibid., 1857, pp. 103-110.*

⁵ *Ibid., 1859, pp. 135-8.*

⁶ *Laws, Reg. Sess., 1861, pp., 166-7.*

By an act of 1841, it was left to the discretion of the jury to determine whether a minor guilty of an offence punishable by imprisonment in the State prison, should be confined for a determinate period in the county jail in place of the State Prison.¹ It may well be questioned whether confinement in the county jail gave any better chance for the reformation of the juvenile offender than imprisonment in the State Prison would afford. Governor Wright is found urging in 1850 that the "county prisons should be converted into workshops—into houses of industry—wearing the appearance of decency and order."²

Evidently this law did not provide the proper remedy. In the Constitutional Convention it was shown, from a detailed statement submitted by the warden of the State prison, that the whole number of convicts committed from 1822 to 1850 was 1131, "of which 157 (more than one-eighth of the whole number) were minors . . . and some of these as young as eleven years."³ The members of the convention were so impressed with the injustice and imprudence of continuing this condition that they incorporated into the fundamental law a mandatory clause declaring: "The General Assembly shall provide Houses of Refuge for the correction and reformation of juvenile offenders."⁴ But it required fifteen years more of importuning on the part of large-hearted officials and other philanthropists to induce the Legislature to establish a "House of Refuge." This was finally done in 1867.

The institution was designed to receive boys under the age of eighteen, committed because of incorrigibility or vicious

¹ *Laws*, 1840-1, p. 184.

² *Message of Governor*, 1850, *Doc. Journ.*, 1850-1, Pt. i, p. 112.

³ *Debates of Const. Conv.*, 1850-1, p. 1903.

⁴ *Constitution*, 1851, art. ix, sect. 2.

conduct, lack of suitable homes and means of living¹ (in certain cases), or because of conviction of crime. The board was to employ those methods of discipline which would, as far as possible, "reform their characters, preserve their health, promote regular improvement in their studies, trades and employments, and secure to them fixed habits of industry, morality and religion." The State was to defray one-half the cost of keeping the inmates; the other half, together with the entire cost of transportation, was to be paid by the county from which each boy was sent.² In 1883 the name of the institution was changed to the Reform School for Boys. It is managed by a board of three commissioners appointed by the Governor.

(c) *The Woman's Prison and the Industrial School for Girls.* Though the Act of 1821 establishing the State Prison did not specifically require the imprisonment of women therein, its terms were general enough to include them and such was the interpretation given the law. Three years later we find that women might be sentenced to the county jail, instead of the State Prison, as the court or jury should think best.³

Up to 1847 but four women had been received at the State Prison.⁴ The warden in that year declared that "if it be the future policy of the State to convict females to the State Prison, the dictates of humanity and a decent respect for the usages of society alike demand that an apartment for their use be provided separate from that of the males."⁵ This was done, and provision for the appointment of a matron at the State Prison was made.

¹ No boy can now be sent to the Reform School merely because he is dependent. *Laws*, 1883, p. 21.

² *Laws*, 1867, pp. 137-145.

³ *Rev. Stat.*, 1824, p. 151.

⁴ *Rep't of Warden, Doc. Journ.*, 1846-7, Pt. ii, p. 45.

⁵ *Ibid.*, *Doc. Journ.*, 1847-8, Pt. ii, p. 131.

In 1867 it was provided that when any city or any private persons had established a "Home for Friendless Women," the Court might, at its discretion and with the consent of the authorities of such Home, with a view to reformation as well as punishment, commit to it any woman or girl convicted of any offence, the punishment of which might be imprisonment. The trustees of the Home were to be governed in the control of such persons by the laws of the State.¹ This was a step in the right direction. Two years later, after repeated appeals, the Legislature authorized the establishment of "The Indiana Reformatory Institute for Women and Girls."² In 1899 the two departments were made distinct.³

(d) *The Reformatory.* The latest phase of this process of differentiation is the reformatory. More than thirty years ago Governor Baker anticipated the need of this institution and had a very definite idea of its purpose and details. He said: "There should, when increased prison accommodations are required, be established an intermediate prison, between the house of refuge and the present State prison, to which the more youthful and less hardened offenders should be sent, and where reformatory influences would be exerted over the prisoners to a much greater extent than is possible in our existing penitentiaries." He also recommended that power be lodged somewhere to remove incorrigible prisoners from the intermediate prison to the penitentiaries, and to transfer, also, prisoners who by their good conduct for a series of years should give evidence of reformation, from the penitentiary to the intermediate prison.⁴ This ideal was not realized until 1897. A fuller discussion of the recent reforms in penal administration will be given in the following section.

¹ *Laws*, 1867, pp. 228-9.

² *Laws, Spec. Sess.*, 1869, pp. 61-72.

³ *Laws*, 1899, p. 22. See sect. 4, vii (c), below.

⁴ *Message*, Jan. 8, 1869, *Sen. Journ.*, 1869, *Reg. Sess.*, p. 44.

4. CENTRAL INSPECTION AND SUPERVISION

Prior to 1889 the most serious defect of the charitable and correctional systems, both local and State, was the absence of any comprehensive scheme of inspection and supervision, which would secure for State officials and the public generally, unbiased information as to the efficiency of the institutions and the economy in their administration.

I. *The Development of Central Control over Local Agencies Prior to 1890.* In respect to the local administration there was scarcely a trace of central organization and even little effective local control. Since 1792 it has been the duty of the court of quarter sessions of the peace, the court of common pleas, or the grand jury to examine the condition of jails and prisoners. Even in the first years of statehood the conditions appear to have been bad, for the Governor in 1818 declared: "The situation of many of our prisons is calculated to invite disease upon limited confinement therein, and to inflict punishment before trial."¹ Since 1799 overseers of the poor have been required to see that paupers bound out to service were properly cared for, and to make some kind of returns to the boards transacting the county business. In 1831 the directors of the poor asylums, and later the contractors who agreed to care for the poor, were required to report to the county board. In 1843 the county commissioners were required to visit in person the county asylums and to exact reports from the superintendents.² In 1852 they were relieved of this duty and were given discretion to appoint annually a board of visitors, to consist of one person from each township or a less number, to visit at least once during the year the county asylum and to report its condition to the commissioners.³ Six years

¹ *Message of Governor, 1818-9, House Journ., 1818-9, p. 21.*

² *Rev. Stat., 1843, p. 361.*

³ *Ibid., 1852, i, pp. 401, 407.*

later, whenever any grand jury should condemn a jail as unsafe or should recommend better provision and accommodation for the prisoners, it was made obligatory upon the county commissioners to cause the jail to be repaired and to provide sufficient air, heat and ventilation.¹

In 1867 any home for friendless women in which girls or women were imprisoned by order of the Court, was declared subject to inspection by the Court or any grand jury, the Governor or any other State officer, any committee of the General Assembly, the council of any city or the board of commissioners of any county in which it was situated.² This right of inspection by State officers was demanded, not because of a belief in the advantages of central supervision over local institutions, but because such "Homes" partook of the nature of State institutions. They, instead of the State prison, might be used as places of confinement for girls and women convicted of crimes against the State. But the law was permissive only, not mandatory.

In 1867 and 1875 counties or cities that paid for the maintenance of orphans in private institutions were declared entitled to representation on the boards of control.³ In 1879 the inspection of workhouses was made obligatory upon the grand jury and discretionary upon other officers.⁴ In 1881 the grand jury was declared to have, during the term of court, free access to the county poor-house, for the purpose of examining its condition and management; but this duty was not obligatory.⁵ In this same year the authority of county commissioners to appoint boards of visitors⁶ was reaffirmed in the Revised Statutes.⁷

The right of inspection of orphanages by both local and

¹ *Laws, Spec. Sess.*, 1858, pp. 41-2.

² *Ibid.*, 1867, p. 228.

³ See page 151 above.

⁴ *Laws*, 1879, pp. 247-8.

⁵ *Rev. Stat.*, 1881, sect. 1667.

⁶ See page 175 above.

⁷ *Rev. Stat.*, 1881, sect. 6101.

State officials was very explicitly and positively established in 1889. It was declared that any "Orphans' Home," whether organized under any law of the State or whether established by private charity, should, at all reasonable hours, be open and subject to the inspection of any Circuit or Superior Court, any grand jury, the Governor, any other State officer, any member or committee of the General Assembly, of the council of any city or of the board of trustees of any town, or board of commissioners of any county, the county superintendent or the township trustee of the township wherein such home was situated.¹ While the right of inspection was thus assured to numerous officers, it was not made obligatory upon any of them. The division of responsibility really meant no responsibility. The law is significant, because it recognized more fully than any previous statute the principle that the State has the right, and is bound to exercise an inspection of local institutions for the care of the dependent.

This brief survey shows how slow was the growth of the theory and practice of central supervision and inspection over local penal and benevolent institutions. The State had not yet devised any adequate means of acquiring reliable information as to their condition. The county boards of visitors were seldom appointed, and their reports were meagre. The conclusions of grand juries were almost never given to the public, except in a very general way. Besides, the jurors were not especially trained in observing defects, and very often failed to detect evils which a specialist would have seen at once. In addition, there was an urgent need for some central supervision which would increase the efficiency and reduce the cost of these institutions.

II. *The Imperfect Supervision of State Institutions Prior to 1890.* It would seem to be a matter of course that the

¹ *Laws*, 1889, pp. 215-8.

State would exact complete and accurate reports of the financial condition and the public usefulness of institutions maintained by funds appropriated out of the State treasury. But the means to that end which were provided by law did not always prove efficacious.

Reports as to the State prison were furnished to the General Assembly at first¹ only by the superintendent who had simply a financial interest in the management of it. Later² the Governor was given authority to appoint a visitor to make examination and report to him. These reports were often unsatisfactory, because the visits were made but once or twice a year and were of short duration. The next step³ was to provide a warden as the representative of the State, who was charged with the internal police of the prison and who, of course, was constantly present. Even then there was great opportunity for collusion. Six years later the offices of chaplain and physician were created. These officers were appointed by the Governor and were to make annual reports to him. When the leasing system was abandoned in 1855, the office of visitor was abolished, and reports were required from the directors, the warden, and the moral instructor. When the Indiana Reformatory Institution for Women and Girls was established in 1869, the Governor was given authority to appoint, from time to time, a board of visitors.

In the case of the benevolent institutions the regular media for obtaining knowledge of their condition were the annual or special reports of the superintendent and boards of directors.⁴

¹ In 1821; see page 167 above.

² In 1824 and 1831; see page 169 above.

³ In 1846; see page 171 above.

⁴ A notable exception of the early period was the right given the Governor in 1833 to appoint a visitor to examine thoroughly the St. Joseph Orphan Asylum (a private institution), and to report to the General Assembly. *Laws*, 1832-3, pp. 75-77.

Besides these sources of information, there were also the investigations conducted by committees of the Houses of the General Assembly, jointly or severally. These were not infrequent, but their value was neutralized by the political motives which generally prompted them, and the partisan bias which often marked their reports.

III. *The Establishment of the Board of State Charities.* The importance of better control over all penal and benevolent agencies, and more accurate statistical information concerning them, was recognized by the governors many years before these reforms were secured. Governor Baker said in 1872: "There ought to be a supervisory board having control of all prison officers with power of suspension or removal for cause during the vacations of the General Assembly. Under the existing arrangements the grossest abuses may exist when the General Assembly is not in session, but there is no power to interfere."¹ Governor Hendricks, five years later, expressed the opinion that the management of the benevolent institutions should be conducted more economically. He thought that the boards of trustees did not give that protection to the State which was intended. Their visits were rather hasty and perfunctory; their investigations not thorough, and their control not rigid. He suggested that an improvement might be secured by placing them all under one board to be appointed by the Governor with the approval of the Senate.²

A fuller control over the management of the benevolent institutions³ was granted to the Chief Executive in 1879. A law was enacted which gave the Governor power to remove any of the trustees of these institutions "upon failure to

¹ *Message of Governor Baker, Doc. Journ., 1872, p. 18.*

² *Message of Governor Hendricks, Doc. Journ., 1876-7, pt. i, pp. 10, 12.*

³ The Asylum for the Blind, the Institution for the Education of the Deaf and Dumb, and the Hospital for the Insane.

faithfully discharge his duties, or for any insufficiency, or any other cause that to him may seem just, with opportunity to the party to answer and defend himself against the charges, he being suspended during the inquiry." The Governor was required to submit a statement of the cause of any removal to the Senate.¹ This was an important step towards a real responsibility resting upon the Governor.

Four years later the appointment of these boards of managers was taken from the Governor and vested in the General Assembly. Such appointees could be removed only by the order of the Circuit or Superior Courts of Marion County, after a proper hearing.² The purpose of these changes was not to promote the highest interests of the public service, but to serve the purposes of political parties by supplying them with the spoils of office. General Harrison, in a speech delivered in 1887, declared that "these institutions are now from top to bottom managed solely and simply as houses of patronage."³

The legitimate results of this condition were the scandals of 1887 and 1889.⁴ A leading journal commented upon one of these as follows:

"The investigation now in progress shows that the management at that institution [Central Hospital for the Insane] has been inefficient and corrupt for several years past. The men who were chosen, in good faith, to carry on the affairs of the hospital, have proved recreant to their trust. . . . They have reflected infinite discredit upon the

¹ *Laws, Reg. Sess.*, 1879, p. 5.

² *Ibid.*, 1883, pp. 16.

³ Quoted by Governor Mount in an address on *Non-partisan Management of State Institutions*, in *The Indiana Bulletin of Charities and Corrections* for June, 1901, p. 13.

⁴ *Sen. Journ.*, 1887, pp. 656, 661, 706, 767, 885, 946, 1004; *House Journ.*, 1887, pp. 831, 856, 879; 1889, p. 38.

party which had so highly honored them. * * * The lesson of it all is that something else than mere party service must be considered in filling these important and responsible positions.”¹ It had become obvious to all that legislative committees could not successfully investigate the condition and workings of the benevolent, reformatory and penal institutions during the session of the General Assembly. What was needed was a permanent official board endowed with power to make thorough examinations at any time and to submit their conclusions, with any recommendations, in formal reports to the Chief Executive of the State. This had been advocated for several years;² but no legislation was secured until these public scandals focused the popular attention upon the questions of the management and discipline of the prisons and the institutions created for the dispensation of charity.

The Board of State Charities was finally created by law in 1889. In the words of the Attorney-General, the “act was passed to correct the abuses which had existed in some of our State and local institutions, and also to lift the management of such institutions to a higher plane by the dissemination of a knowledge to the officers governing them of modern and efficient methods in the care and treatment of the unfortunate and delinquent classes.”³

IV. *The Powers and Organization of the Board of State Charities.* The Board of State Charities is composed⁴ of

¹ *Indianapolis Sentinel*, March 9, 1889, p. 9, quoted in *Bulletin Char. and Cor.*, June, 1901, p. 14.

² See *Message of Governor Gray, House Journ.*, 1881, pp. 64-5; *Inaugural of Governor Porter, House Journ.*, 1881, p. 80; *Repts in Sen. Journ.*, 1879, pp. 286, 440; and 1881, pp. 113, 477.

³ *Opinions of Attorney-General*, 1890, p. 191.

⁴ *Laws*, 1889, pp. 51-2.

seven members—the Governor and six other persons appointed by him, three being from each of the two leading political parties. The term of office of each is three years, two retiring annually. The members serve without compensation. The Governor is the president of the Board. It meets regularly once each quarter, and more frequently if necessary. It appoints a salaried secretary, who is the chief executive officer of the Board. The Board is divided into six committees. This permits concentration of effort; at the same time the division is not so distinct as to prevent any member of the Board from acquiring familiarity with all the lines of activity and inquiry.¹ There have been few changes in its membership. While there have been in the thirteen years three secretaries, the two former officers resigned to render service in other fields of philanthropic work.

The law gave the board authority to investigate the whole system of charitable and correctional institutions of the State and to examine into their condition. They had power to require the presence of persons, the production of papers and the submission of such information and statistics as they deemed proper. The report of any investigation, with their recommendations, was to be submitted by the Board to the Governor. They had power to prescribe forms of reports and registration and to criticise and suggest changes in the plans of jails and infirmaries which county authorities were required to present to them before their final adoption.²

The Board adopted a rule providing that all State charitable, penal and reformatory institutions should be visited at least quarterly by the Secretary, and annually by the committee having supervision of the same, and might be visited annually or oftener by the whole Board; and that all local institutions should be visited annually by the Secretary and,

¹ *Report of Board of State Charities, 1893, p. 14.*

² *Laws, 1889, p. 52.*

if emergency might require it, by the proper committee or the whole Board.

In some quarters fault was found with the law under which the Board was organized, because there was granted to it no executive power to reform abuses; consequently its inspections, it was said, would be valueless. The Board made no complaint of its lack of powers, but set about its work in a quiet way. The spirit with which it strove to accomplish its high purpose may be seen in an extract from its second report. "The duties undertaken by this Board in March, 1889, were new to the State of Indiana. They were vague, ill-defined and little understood. There were no precedents to guide us. With unrestricted rights of investigation and inspection it has no active powers but those of moral and spiritual influence. Its usefulness must be, if at all, by the methods of convincing and conciliating, not of commanding." ¹

V. *The Board of State Charities and the Local Penal Institutions.* It must be admitted that the Board of State Charities has had little influence upon the conditions in, or the management of, county jails. Neither their advisory powers nor their influence upon legislation have sufficed to abolish the evils that have prevailed so long. There has been some improvement through the efforts of officers, urged by the Board, to secure greater cleanliness, better ventilation and stricter discipline. But in many cases the jails are still foul and unwholesome and lax in discipline. The worst evil is their moral condition. "Therein are gathered together the professional criminal and the inexperienced boy, the unfortunate who is held as a witness and the infested tramp. They are not separated, but congregate together, becoming a moral pest-hole, a training school in crime." ²

¹ *Rep't Bd. St. Char.*, 1891, p. 14.

² *Rep't Bd. St. Char.*, 1899, p. 97.

The Board has repeatedly urged provision for the complete separation of the sexes, thorough classification of the inmates, and a separate cell for each person. These desirable ends cannot be attained without reconstructing in whole or in part very many jails. To many tax-payers and officers, these changes would seem to entail an unnecessary and unwarranted expenditure of money. It may, therefore, be some time before these reforms are realized. There has been vast improvement in the new jails erected within the past decade. The suggestions of the Board in regard to them have been cordially received and plans have often been modified for the better.

In 1901 the Legislature acting upon the recommendation of the Board passed a law requiring the appointment of a prison matron in any county having a population of 50,000.¹ It is her duty to have charge of the woman's department of the jail.² But this is only a very short step towards the realization of that ideal system in which the State shall have control of all minor prisons, and jails shall be used only for purposes of detention.³

The Board has recommended that for the punishment of minor offences district workhouses should be established, which should be reformatory in character and under non-partisan control.⁴

VI. *The Board of State Charities and Local Charity. (a) County Asylums.* In respect to the dispensation of local charity the Board has been more influential. The Secretary in his first report stated, that "the cruelty and avarice that existed in times past, if reports be true, are rarely or never seen. There are few who are intentionally negligent. Where abuses and defects exist, they are largely due to ignorance, to overwork, or to need of proper conveniences

¹ It has application in six counties.

² *Rep't Bd. St. Char.*, 1900, p. 11.

³ *Laws*, 1901, pp. 304-5.

⁴ *Ibid.*, 1900, pp. 11-12.

A general desire for improvement exists and the suggestions I have been able to make have been well received."¹

The chief defects and evils noticed in the early reports, were the unsanitary construction of buildings; the imperfect separation of males and females; and the indiscriminate mingling of all classes and grades, the respectable poor with the depraved women and men, the orphan with the inveterate pauper, the sane with the insane, epileptic or idiotic. These conditions did not prevail in all poor asylums, nor all these conditions in the same asylum. Ten counties had in 1890 the pernicious "contract system," by which the care of all the paupers was auctioned off to the lowest bidder.²

(b) *Dependent Children and the State Agency.* The Board emphasized particularly the inhumane and uneconomical system under which the dependent children were being kept in schools of pauperism and the feeble-minded women were permitted to perpetuate their kind. In forty-eight counties no special provision for dependent children was made and, unless cared for by some private charity, such children were kept in the county poor asylums with adult paupers. Most of the institutions established for dependent children were managed by matrons who received from their respective counties a certain per diem allowance for each child cared for. The chief evils of this arrangement have been pointed out above.³

Largely through the influence of the Board these defects have, in a measure, been corrected. The chief remedies recommended⁴ were: the extension of the law authorizing the appointment of boards of children's guardians so as to apply to all counties; the establishment of a State school for instructing dependent and neglected children in "the fundamental ideas of truthfulness, cleanliness and obedi-

¹ *Rep't Bd. St. Char.*, 1890, p. 21.

² *Ibid.*, 1890. App., no. 2, p. 10.

³ See page 152 above.

⁴ *Rep'ts Bd. St. Char.*, 1894, pp. 28-9; 1895, p. 34.

ence;" a complete system of placing-out under the supervision of the State; and the substitution of a mandatory law for the permissive one respecting the establishment of orphans' homes by county commissioners.

In 1897 a law¹ was enacted by which the State assumed direct supervision of the work for children, and in a way recognized the principle of State care. The statute prohibited the retention of children between the ages of three and seventeen in county poor asylums for a longer period than ten days.² County commissioners are required to provide for them in one of three ways. They may "establish and maintain asylums for the support, care, education, control and protection of orphan, dependent, neglected or abandoned children"; they may enter into contracts with associations organized for these purposes; or they may place such children in charge of the State agent, whose duty it is to find them suitable homes in private families. In order to prevent annoying interference on the part of the parents or guardians, they are required to make an absolute release of all rights over the children who are placed in any such charitable institutions.³ It is made the duty of these associations to secure permanent homes for the children and to see by visits and reports that they are properly cared for.

For the better administration of the law the Board of State Charities is empowered to appoint a suitable State agent or agents to serve during its pleasure. It is the right and duty of every agent to inspect all orphan asylums and to report to the Board of State Charities and the commissioners of the county in which each asylum is situated. It is also his duty to seek out proper permanent homes for the children and to visit them regularly. If he believes that any child

¹ *Laws*, 1897, pp. 44-48.

² In 1901 this period was extended to sixty days. *Laws*, 1901, p. 406.

³ If necessary the Circuit Court has power to render an order to that effect.

under his supervision is not receiving proper care and treatment, he has power to remove it from the private home in which it is placed, and return it to the association or county from which it came. Every association caring for children is required to send each month to the Board of State Charities the name, age and description of every child received, and of each child indentured during that period; and the name and place of residence of each person to whom any child has been apprenticed.¹

At first there was a disposition on the part of the directors of both public and private orphanages, to resent what was called State interference on the part of the Board. But when these authorities fully understood the plans and purposes of the law, they heartily coöperated with the State agent.²

The law went into effect April 1, 1897. From that date to October 31, 1901, eight hundred and fifty-two children were placed in families. Of these six hundred and twenty-four, or more than 73 per cent. still remained off public support.³ The following figures show the changes in the poor-house population in the last decade:

	1891.	1897.	1899.	1900.	1901.
	Sept. 1.	Aug. 31.	Aug. 31.	Oct. 31.	Oct. 31.
Dependent children in poorhouses.	432*	232*	103†	49†	64†

* Children under 16 years of age.

† Children under 17 years of age.

As it costs about \$100 per annum to support a child in a county poor asylum, there was a saving of public expense for the year 1901 alone, of about \$60,000. This financial benefit does not include that greater reduction of the future costs of pauperism and the improved moral and physical condition of the children.

¹ *Laws*, 1897, pp. 44-8.

² *Rep't Bd. St. Char.*, 1897, p. 33.

³ *Rep't Bd. St. Char.*, 1901, p. 103.

The number of children reported as visited in 1901 is 1,069. Of these 841 were reported as "doing well," 158 as "doing fairly well," 70 as "doing poorly," 48 as "transferred," and 80 returned to the counties. The total number of children in orphans' homes October 31, 1901, was 1,690; in county poor asylums on the same day there were 64 children under seventeen.¹ Fifty-eight counties had no children under seventeen in their county poor asylums.² While there has been such a remarkable decrease in the number of children in the county poor asylums, it has not been attended by an unusual increase of children in the orphanages. The total number of juvenile dependents in all institutions in 1891 was 1,447 or 6.6 persons in each 10,000 of the population; in 1900 it was 1,682 or 6.64 in each 10,000³.

In 1896 the average period during which children remained in the county asylums was affirmed to be not less than three years⁴. In 1900, by careful computation, it was shown to be a little less than one year and nine months⁵. In the Soldiers' and Sailors' Orphans' Home a greater effort has also been made to place the children in the care of private families⁶.

It does not seem extravagant to predict that the following advantages which are claimed for the new law will be realized: (1) Tax-payers will be relieved by a reduction of expenditures; (2) Children will be taken from the county poor asylums; (3) The temporary storage of troublesome and unwanted children in orphan asylums will be discouraged and prevented; (4) Evils of aggregation in State institutions will be avoided and the benefits of a period of

¹ Twenty-seven of these were under three years of age, and hence not subject to the law.

² *Rep't Bd. St. Char.*, 1901, pp. 101, 103, 107, 112.

³ *Rep't Bd. St. Char.*, 1900, p. 74.

⁴ *Ibid.*, 1896, p. 27.

⁵ *Ibid.*, 1900, p. 148.

⁶ *Ibid.*, 1900, p. 42.

institution training will be secured; (5) The elasticity of the system will permit the exercise of individuality in the management of different institutions, allowing adjustment to local conditions; and (6) Local interest in child saving and local pride in home institutions will be preserved and fostered¹.

In 1901 a law was passed which authorizes, but does not require, the creation of a board of guardians² in each county. These boards are required to report to the Board of State Charities as often and in such manner as the latter may require³.

(c) *The Feeble-Minded.* Another class of the poor-house population which has received more thoughtful consideration from the State Board of Charities is the feeble-minded. While the inmates of the School for Feeble-Minded Youth have increased in number from 378 in 1891 to 795 in 1901, there has been no diminution of the number of such unfortunates in the county asylums. On the contrary the number has increased within the same time from 834 to 916. Of these, 436 are females over fifteen years of age⁴, many of whom are the mothers of from six to ten feeble-minded children. "It is not unusual to find in a poor asylum three generations of feeble-mindedness⁵."

The Board repeatedly emphasized the importance of the custodial care of the feeble-minded females⁶, not only upon humane grounds, but also for reasons of economy as well. These women being incapable of defending themselves against the influences of immorality, become the mothers of

¹ *Rep't Bd. St. Char.*, 1897, p. 22.

² See pages 152-3 above for the powers of such boards.

³ *Laws*, 1901, pp. 369-373.

⁴ Of these 206 are between the ages of 15 and 45.

⁵ *Rep't Bd. St. Char.*, 1899, p. 45; 1900, pp. 64-67; 1901, pp. 53, 71, 77.

⁶ *Ibid.*, 1893, p. 66; 1894, pp. 7, 50-3; 1895, p. 12; 1900, pp. 15, 64-67.

children "usually illegitimate and almost invariably deficient mentally." The expense of supporting such women in a State institution would be little if any greater than the cost of maintaining them in county institutions; besides, the State would eventually be saved a great expense in the care or punishment of their progeny.

The logical and persistent advocacy of this plan by the Board of State Charities produced so deep an impression upon the philanthropists and the public generally, that in 1901 the Legislature enacted a law to carry out this policy.¹

In regard to the male adult feeble-minded, the Board has expressed the opinion that the best solution of this problem is to be found in their colonization upon farms, where their energies might be directed into the most healthful, and, at the same time, most profitable channels.²

(d) *The Administration of County Poor Asylums.* Another recommendation which had been made by the Board of State Charities, was given legal sanction in 1899. County commissioners are now required to appoint a superintendent of the county asylum who serves for a term of two years unless sooner removed for cause. His salary is fixed by the board of county commissioners. This provision abolishes entirely the contract system which still existed in a few counties. The law enumerates certain qualifications as to character, disposition, executive ability, education and experience which are required of the superintendent; and then it proceeds to state; "No considerations other than character, competence and fitness shall be allowed to actuate the commissioners in the selecting, continuing or discharging any superintendent or other officer." It is the hope, perhaps delusive, that this advisory clause may serve to eradicate all evidences of partisanship from the control of the asylums.

¹ *Laws*, 1901, pp. 156-8. See also pages 161-2 above.

² *Rep't Bd. St. Char.*, 1895, p. 29.

A considerable degree of centralization is secured in the requirement that the superintendent of any county asylum shall "carefully observe the rules and regulations prescribed by the county commissioners and be guided by the suggestions which may be made to him by the Board of State Charities and by the Board of County Charities and Corrections" in any county where the same shall exist. It is his duty also to make such reports to the Board of County Commissioners and to the Board of State Charities as may be required¹. Additional weight is here given to the suggestions of the Board by making them mandatory.

(e) *Boards of County Charities and Corrections.* The Board of State Charities was not so short-sighted as to presume that the annual or semi-annual visits made by its secretary or some of its members to the county institutions, were sufficient to conserve the best interests of the people or the welfare of the inmates. They perceived the advantage to be derived from enlisting local pride and interest in these efforts for the improvement of the dependent and delinquent classes. Indeed, in some counties such an interest had already led to beneficial results from the visits of voluntary bodies of humane and public spirited citizens². But there was need of such inspection made regularly by some official and impartial body of competent persons. The Board of State Charities recommended the establishment of a local board of visitors in each county. "No institution," it said, "left solely to itself and its own officers will escape getting into a rut. The fresh eye and mind of the outsider will always see something to which custom has dulled the eyes of those who see it every day³."

An act was passed in 1899 creating such local boards. By authority of this law the Judge of the Circuit Court may,

¹ *Laws*, 1899, pp. 103-5.

² *Rep't Bd. St. Char.*, 1891, p. 46.

³ *Ibid.*, 1893, p. 17.

and upon the petition of fifteen reputable citizens must, appoint a bi-partisan Board of County Charities and Corrections composed of six persons, of whom at least two must be women. The members serve without compensation. The board is required to meet quarterly or more often if necessary. It has full power to visit and carefully and thoroughly inspect, by the whole board or by its committee, all charitable and correctional institutions of the county that may receive any support from the public fund. It is their duty to ascertain whether the rules laid down by the board of county commissioners for the control of each institution and the suggestions offered by the Board of State Charities are being complied with. They may make suggestions to the persons in charge of the institution as to improved administration, and may report to the board of county commissioners or other officials having jurisdiction, any facts which ought in their judgment to be known by these officials. In case the board finds a state of things in any institution which is injurious to the inmates of it or to the county, or which is contrary to good order and public policy, it is their duty to address a memorial to the board of county commissioners or other officials having jurisdiction, in which they shall set forth the facts observed and suggest the remedies that seem to them necessary. This board of county charities and corrections makes quarterly reports to the board of county commissioners, showing the condition of the institutions visited during the year, and an annual report to the Judge of the Circuit Court; it sends copies of all reports and memorials to the Board of State Charities. It has authority to call upon the Secretary of the Board of State Charities for advice and assistance¹.

By October 31, 1901, such boards had been appointed in

¹ *Laws*, 1899, pp. 50-1; 1900, p. 412.

50 of the 92 counties.¹ "Some have rendered very efficient service. Their reports have led to an improvement in the condition of the inmates, repairs to buildings, and more satisfactory management. It is almost impossible to have these representatives of the people visiting the public institutions quarter after quarter and making known to the officials and the public through the local press the facts they find and the needs existing, without better conditions resulting."²

(f) *Outdoor Relief.* Probably the most appreciable influence which the Board of State Charities has exerted in respect to local charity, is to be found in connection with the "out-door" relief or the aid which is administered by the township trustees to the poor not kept in the county asylums and orphanages.

Prior to 1896 there was no means of obtaining information as to the number of persons relieved, the number of times individuals applied for aid or the reasons for asking assistance. It was known, through the reports of the Bureau of Statistics, that the amount expended was very large.³ But whether it was expended corruptly and wastefully, or honestly and wisely, no man could know.

In order that it might have some basis for rational action in the future, the Legislature in 1895, in response to the recommendation of the Board of State Charities, enacted a

¹ *Rept Bd. St. Char.*, 1901, p. 24.

² *Ibid.*, 1899, p. 24.

³ Amounts expended by township trustees for poor relief (including medical assistance):

Year.	Total.	Amount per cap. of total population.
1891.....	\$560,365 95	.256
1893.....	511,503 35	.232
1894.....	586,232 27	.268
1895.....	630,168 79	.289
1900.....	209,956 22	.083

Rept's Bureau of Statistics, 1891, p. 141; 1893, p. 87; 1894, pp. 92, 96; 1895, pp. 52, 55.

law requiring township overseers and other persons administering relief from public funds to persons who are not inmates of any public institution, to keep a record, giving among other facts the name, age, sex, and nationality of every person receiving aid, the amount of aid furnished and the date. Two copies of this record are to be filed in the office of the auditor of the county. It is unlawful for the county commissioners to allow payment of the expense of the relief until this is done. The auditor transmits quarterly one of the duplicate copies to the Board of State Charities¹. There was some neglect and carelessness in making the reports the first two years. But the Board was insistent; and since 1898 prompt reports have been had from every township trustee. The number of persons receiving aid was startling. The need of radical legislation was convincing.

The next step in the direction of reform was to transfer the burden of the outdoor relief furnished by trustees from the county to the township². This makes the trustee more cautious in the granting of relief, since his constituents hold him responsible for the expenditure of their taxes.

Two years later a law still more complete in its details was enacted. It requires the trustee carefully to investigate the circumstances of poor persons applying for aid—their legal residence; the condition of their health, present and previous occupation, ability and capacity of themselves and other members of the family for labor, the cause of their distress, and whether such persons have relatives able and willing to aid them. He must refuse regular aid to able-bodied persons, unless they attempt to find work for themselves; but he must help them in their search for work. The overseer can not give aid a second time until he has asked the relatives of the applicant (if he has any) to furnish assistance to him. When the amount of aid given to

¹ *Laws*, 1895, pp. 241-2.

² *Ibid.*, 1897, p. 230.

any poor person or family equals \$15, [or when, being less than \$15, it extends over a period of three months,] the trustee cannot legally grant further aid without the approval of the county commissioners. A duplicate copy of the statement of every such case submitted to the county board, must be filed with the county auditor, who transmits it to the Board of State Charities. Permanent charges must be removed to the county asylum. The restrictions surrounding the granting of aid to transients reduce the assistance given to tramps to almost nothing. "All allowances for charitable purposes made from the public funds by any officers either of the county or of the township, shall be reported quarterly by the county auditor to the Board of State Charities'."

The law was denounced as impracticable. It was believed that its operation would cause the county asylums to be filled. These predictions have not been realized. The following statistics will show the effects of the laws which have been passed within the last six years. The year 1895 was the last before reports were required; the year 1898 was the last full year under the laws of 1895 and 1897.

	1895.	1898.	1900.	1901.
No. of persons receiving aid from township trustees... ..		75,119	46,369	52,801
No. of times aid was given.		173,088	74,546	79,421
Total amount of aid given..	\$630,168.79	\$375,206.92	\$209,956.22	\$236,724.00
Poor Asylum population... ..		3,102	3,096	3,091

The figures for 1895, 1900 and 1901 include both outdoor and medical relief; those for 1898 do not include medical relief. The figures for 1900 and 1901 embrace, also, about \$20,000 expended by trustees under the compulsory education law to enable indigent children to attend school. Comparing the years 1895 and 1900, a reduction of more than

¹ *Laws*, 1897, pp. 121-123. The part in brackets was omitted in the law of 1901.

\$420,000 or 66 per cent. is observed. Comparing the years 1898 and 1900, it is noticed that the number of persons aided has been decreased by 28,750, and the amount of aid given, by \$165,250.70. The increase in the number of persons aided and the amount of aid given in 1901 as compared with 1900, is due in part to the fact that "during that year the poor relief was administered by an entirely new set of trustees, who came to the office without experience or familiarity with the law¹."

After making due allowance for the period of prosperity, there is no doubt but that this decline is due chiefly to the legislation and supervision of the past six years. In twenty-six townships no relief whatever was given in 1899. Paupers who had in many cases been receiving permanent aid, were dropped; and they found some means of keeping out of the poor-house and the suffering has not increased. The number of persons in the poor asylums has decreased not only relatively but absolutely².

(VII) *The Board of State Charities and the State Institutions.* The influence of the Board in the State institutions has been quite as marked and beneficial. Almost at once it attained in a high degree the confidence of the public as well as that of the managers of the State institutions. Some of the scandals prior to 1889 were humiliating indeed. But often honest officers had to remain under the odium of malicious and unfounded charges, until the General Assembly at its subsequent meeting could make an official examination. In the meantime the reports might have grown into a wide-spread scandal. So the honest and capable managers quickly realized, that an impartial official board

¹ *Ind. Bulletin of Char. and Cor.*, March, 1902, p. 12.

² In 1891 there were 14.8 persons in each 10,000 of the population who were cared for in poor asylums; in 1901, only 12.2 persons in each 10,000 were so reported. *Rep't Bd. St. Char.*, 1901, p. 80.

with legal powers of investigation was a strength to them and a defence against false rumors and calumnies. On the other hand, if there was truth in the charges, the evils might be quickly redressed without the unnecessary noise and publicity which tend to break down popular confidence in public institutions. The Board has been aptly characterized as a "representative of the public in the institutions" and a "representative of the institutions before the public."¹

In most cases of complaint to the Board the matters requiring attention have been brought to the notice of the superintendent of the institution concerned, and no further action has been needed.² Better administrative methods were secured in some institutions without legislative action, through the suggestion of the Board. One instance of this was the general adoption of the plan of purchasing supplies by public contract. This reform destroyed at once a prolific source of malicious attacks.³

(a) *Non-partisan Administration.* In its first report the Board of State Charities made an appeal for the non-partisan management of the State Institutions. The first step in this direction was to take the appointing power from the legislative department and place it in the hands of the Chief Executive. This was done in 1893. The Governor was empowered "to appoint all the officers for all Benevolent, Educational, Penal, Reformatory and other Institutions of the State, and all other officers of the State whose election or appointment is now vested in the General Assembly by law."⁴ He was given authority to remove any of these officers for incompetency, malfeasance in office, or for any other just cause, furnishing to the person accused a statement of

¹ *Rep't Bd. St. Char.*, 1893, p. 29.

² *Ibid.*, 1891, p. 23

³ *Ibid.*, 1891, p. 22.

⁴ Except the State Librarian and State House Engineer.

the cause of removal.¹ This law placed the responsibility where it belonged, but did not guarantee the elimination of party motive in making the appointments. The influence for good was immediately felt. In October of that same year the Board of State Charities was gratified to say: "Never in the history of State charitable institutions has their management been freer from the corrupting influences of partisan politics than to-day, and never has merit been so nearly the only test of fitness for employment in these institutions." ²

At the next session of the General Assembly two other laws regulating the appointment of boards of managers of State institutions were enacted. The first³ of these, which was passed over the Governor's veto, was retrogressive. It deprived the Governor of the power of appointing the boards of directors for the prisons for men, and gave that authority to an "appointing board" composed of the Governor, Auditor, Treasurer, Secretary of State and Attorney-General, a majority of whom differed from the Governor, but concurred with the Legislature, in their political opinions. The sole power to remove any member of these boards lay with this appointing power.

The other law was so diverse in its tenor that it seems strange that it was fathered by the same Legislature. By it the management of the four hospitals for the insane and the two institutions for the education of the blind and the deaf and dumb was vested in boards of control for the respective institutions, each consisting of three members "of known fitness, probity and high character." These eighteen trustees were to be appointed by the Governor, not more than nine of them to belong to the same political party. The

¹ *Laws*, 1893, pp. 137-8.

² *Rept Bd. St. Char.*, 1893, p. 15.

³ *Laws*, 1895, pp. 160-3.

Governor was to designate the institution for which each person was appointed, but not more than two persons on each board could be members of the same political party.¹ This was an advance step towards placing their control upon a non-partisan basis. The law was almost universally approved. Two years later a concession was again made to the politicians, by a modification of the law providing that not more than twelve of these eighteen trustees should belong to the same political party.² This change made it possible for the party in power to have a majority of the trustees on each of the six boards of control. Governor Mount, a consistent and devoted friend of reform, refused to take any advantage which might be derived from this law and, as far as possible, re-appointed the trustees whose terms expired during his administration.

In 1897 the power to appoint the members of the boards of control of the State Prisons was restored to the Governor.³ But the laws did not compel the appointment of bi-partisan boards. At the next session the board of managers of the Reformatory was by law required to be bi-partisan.⁴ Thus, the only institution left under political control is the State Prison. In fact, if not in law, its present management rests upon the sound principle, that one's political belief should not be considered in the appointment to, or retention in, office.⁵

Prior to 1897 the Legislature attempted to ascertain the needs of the State institutions by means of "junketing" committees. These "excursions" necessitated the absence of members, often interfered with legislative business and furnished little or no reliable information. By an act of 1897, amended in 1901, the Governor is empowered to ap-

¹ *Laws*, 1895, pp. 300-1.

² *Ibid.*, 1897, p. 158.

³ *Laws*, 1897, pp. 69-70, 241-2.

⁴ *Ibid.*, 1899, p. 410.

⁵ *Rep't Bd. St. Char.*, 1899, pp. 5, 6.

point, ten days after each general November election, a bipartisan committee composed of three members-elect of the General Assembly (one Senator and two Representatives). It is the duty of this committee to visit the penal, benevolent and educational institutions; to investigate their needs and necessities, and to make a report to the Legislature, stating the amount of appropriation which they deem absolutely necessary to meet the wants of each institution.¹ The operation of the law has been very satisfactory. The recommendations of the committee have been generally accepted. They have not only saved the State unnecessary expenditures but have also protected the institutions from a niggardly economy.

A law of 1899 regulating the reports of officers, gives the Auditor of State a more thorough knowledge of the various items of expenditure of all institutions for which money is appropriated from the treasury of the State.²

The results following from the displacement of the spoils system have been an increased efficiency in management, a more extended service to the State at a greatly reduced cost, a higher standard in public life and an absence of scandals and corruption. Comparing the year 1891—the first in which satisfactory reports were obtained by the Board of State Charities—with the year 1899, the reduction in cost to the State since the non-partisan management was introduced becomes striking. The per capita cost of gross maintenance of the charitable institutions in 1891 was \$229.79; for 1899 it was \$167.37, a reduction of \$62.42 per capita. If this difference is multiplied by the daily average number of inmates, the result will show that the cost in 1899 would have been at the former rate under the old system, \$328,470 greater than it was.³ While average prices fell from 100.6

¹ *Laws*, 1897, pp. 16, 17; 1901, pp. 75-6.

² *Laws*, 1899, p. 407.

Rep't Bd. St. Char., 1900, pp. 7, 8.

in 1891 to 86.5 in 1899—about 14 per cent.,¹ the reduction in the cost per capita was more than 27 per cent. It is, therefore, evident that this decrease in the expenditures of State institutions cannot be explained by alleging a corresponding fall of prices. Now, this saving to the tax payers has been effected without depriving any person of the aid which he would have had with the greater expense. In fact, the number of inmates of these institutions was greater in 1900 than in 1891. Not only has the number of unfortunates cared for increased, but in the treatment of these there has been great improvement. Those most competent to speak do not hesitate to say: "Never before were the inmates of our institutions so well cared for at so little cost as now."²

(b) *The Hospitals for the Insane.* While progress has been made in the care of the insane, there remains much to be done. The great need is for sufficient accommodations for the incurable insane. The number of insane confined in jails and county asylums or detained at home is between 600 and 700, or about 15 or 16 per cent. of the total insane population. A large number of these are incurable.³ In urging the necessity for the care of this class the Board concludes: "If the history of the matter could be written in full, if particulars could be given of the numerous sorrowful and distressing cases, the struggle and disappointments, the unhappiness caused by the return of chronic insane to their families, or to the county poor asylum; the expense to the

¹ *Bulletin Department of Labor*, No. 27 (March, 1900), p. 275.

² *Rep't Bd. St. Char.*, 1900, p. 8. Compare also the complimentary references to Indiana institutions, quoted by Governor Mount in *The Indiana Bulletin of Charities and Corrections for June, 1901*, pp. 16, 17.

³ *Rep't Bd. St. Char.*, 1900, pp. 61-3. A bill for an act to establish an asylum for this class passed the Senate in 1899, but failed to become a law because the Senate refused to concur in the House amendments. *Sen. Journ.*, 1899, pp. 586, 1003; *House Journ.*, 1162.

counties which have tried to make proper provision for them, the sufferings of the insane when county commissioners have been penurious, or superintendents of poor asylums inhuman or careless, if all this could be written the case would be far stronger."¹ Other recommendations of the Board of State Charities are: the founding of a village under the control of the State for all epileptics; and the establishment of colonies for able-bodied, harmless, chronic insane, apart from, yet under the supervision of, the hospitals for the insane.²

(c) *Penal and Reformatory Institutions.* There is no better illustration of the respect which is entertained for the opinions and recommendations of a body of experts than that found in the legislative and administrative history of the penal institutions of Indiana during the past decade.

(1) *Recommendations of the Board of State Charities.* In the first report of the Board the following recommendations were made:

(i) The establishment of an intermediate prison or a reformatory for men;

(ii, iii) The introduction of the indeterminate sentence and the parole system;

(iv) The adoption of the Bertillon system of registration;

(v) The beginning of legislation leading up to an habitual criminals' law;

(vi) The increase of the salaries of prison wardens and the absolute prohibition of perquisites;

(vii) The transference of the insane convicts to one of the hospitals for the insane;

(viii) The application of the surplus earnings of prisons to the benefit of the prisoners;

(ix) Better provision for the education of criminals;

(x) The abolition of degrading forms of punishment;

¹ *Rep't Bd. St. Char.*, 1892, p. 32.

² *Ibid.*, 1899, p. 9.

(xi) Non-partisanship in the management of penal and reformatory institutions;

(xii) The authorization of the appointment of a State visitor to have access to all inmates of the penal and reformatory institutions to give them personal counsel and encouragement, and to visit those on parole.¹

In subsequent years these recommendations were repeated and others were added:

(xiii) The complete separation of the Indiana Reform School for Girls from the Women's Prison;²

(xiv) A modification of the law regulating the discharge of prisoners;³

(xv) The enactment of a probation law providing for the suspension of sentence in certain cases;⁴

(xvi) The discontinuance of the practice of receiving Federal prisoners in the State prison;⁴

(xvii) The extension of the indeterminate sentence and parole law to convicts in the State prison, sentenced before the passage of the law or for a definite period;⁵

(xviii) The further restriction of the right of the public to visit State institutions.⁵

It is instructive to note how many of these proposals have been incorporated into law and how beneficial such laws have been in their operation.

(2) *Reforms Accomplished.* At the session immediately following the first report of the Board, numerous bills embodying their suggestions were introduced, but only two were enacted into law. These increased the salaries of wardens and forbade the retention of perquisites.⁶

Two years later a law was passed which prescribes conditions under which corporal punishment may be inflicted

¹ *Rep't Bd. St. Char.*, 1890, pp. 28-9, 30-35.

² *Ibid.*, 1894, p. 69.

³ *Ibid.*, 1895, p. 13.

⁴ *Ibid.*, 1896, pp. 12-13.

⁵ *Ibid.*, 1898, pp. 17, 18.

⁶ *Laws*, 1891, pp. 53, 353.

upon convicts. To make the law effective in its operations, it is required that a discipline record be kept in which all punishments are to be entered. It is made the duty of the Secretary of the Board of State Charities at least quarterly to read and sign this record. Since then the managing boards of the Reformatory and the State Prison have voluntarily introduced the use of different uniforms for the different grades. The class to which a prisoner may be assigned, is determined by his own conduct in the prison.

A law authorizing the transfer of insane convicts from the State prison to the insane asylum was passed in 1895.¹ However, this was not carried out for lack of room. In 1899 the establishment of a hospital for the criminal insane was authorized. It was to be located at Jeffersonville under the control of the managers of the Indiana Reformatory. All insane convicts in the Indiana Reformatory and the Indiana State Prison, and any insane criminals in any jail or workhouse, were to be transferred and confined therein.² Because of a question as to the validity of the law, no steps were taken to put its provisions into operation.⁴

On account of the reforms introduced in 1897, that year will always be a notable one in the history of penology in Indiana. The imprisonment in the State prison or Reformatory of persons sentenced by the Federal Courts was prohibited.⁵ This removed an element of confusion and left more room for convicts sentenced under State laws.

The act regulating the discharge of prisoners was amended so as to give ex-convicts a better chance of beginning a new life apart from their former associates and temptations.⁶

¹ *Laws*, 1893, pp. 269-271.

² *Ibid.*, 1895, p. 176.

³ *Ibid.*, 1899, pp. 505-8.

⁴ *Rep't Bd. St. Char.*, 1899, p. 6.

⁵ *Laws*, 1897, pp. 218-219.

⁶ *Ibid.*, 1897, pp. 114-115.

Still another law¹ abolished contract prison labor and substituted the "public account" system,² according to which the prisoners are employed in the production of articles needed in the State charitable and correctional institutions. The law requires the use of hand labor as far as practicable. There have been some difficulties in the way of the smooth operation of the law. The State Prison and the Reformatory are now making their own clothing; the convicts at the State Prison manufacture their own shoes, stockings and tobacco, and will soon undertake the production of certain kinds of textile goods on hand looms.³ The provision requiring hand labor as far as practicable seems hardly in harmony with the rest of the legislation of this period. The fundamental idea is that the prisoner should be reformed and prepared as far as possible for an honest and a useful life in society. But society as now organized has few places for the hand-worker as distinguished from the artisan or the mechanic. What opportunity for an honest living is there in competitive conditions for the man who has spent a considerable period learning to make coarse cloth on a hand loom?

(3) *The Reformatory*. In 1897 the State Prison South was converted into the Indiana Reformatory⁴ for the incarceration of male prisoners who may be convicted of any felony, except treason and murder in the first or second degrees, and who are between the ages of 16 and 30. Other convicts are to be confined in the State Prison at Michigan City. The Reformatory is under the control of a board of managers consisting of four persons appointed by the Gov-

¹ *Laws*, 1897, pp. 289, 290.

² The existence of prior contracts will prevent the complete operation of the law in the State Prison until 1904, and in the Reformatory until 1906.

³ *Rep't Bd. St. Char.*, 1899, p. 9.

⁴ *Laws*, 1897, pp. 69-77.

error. He has power to remove any member for misconduct or neglect of duty after an opportunity to be heard. Their compensation is \$300 per annum and expenses. The board of managers appoints the general superintendent and has power to remove him. All other officers are appointed and selected by the general superintendent and are removable at his pleasure; appointments are made only after a rigid examination.

(4) *The Indeterminate Sentence and the Parole System.* The same law established the principle of the indeterminate sentence, which leaves the period of confinement indefinite, fixing only the minimum and the maximum terms. The board of managers may terminate the imprisonment when the requirements have been fulfilled. They also have authority after the expiration of the minimum term to release prisoners on parole. It is the duty of the managers to make provision for the literary and manual training of every inmate. They have very extensive authority in respect to making rules and regulations governing the reward, classification and punishment of convicts. With the consent of the Governor incorrigible prisoners may be transferred to the State Prison.

The principles of the parole and the indeterminate sentence were made applicable to prisoners sentenced thereafter to the State Prison, except in the case of persons convicted of treason or murder in the first or second degree.

Two years later the parole law was made applicable to persons in the State Prison who had been sentenced for a definite time prior to the enactment of the former law. In 1899 these principles were extended also to all women or girls over fifteen thereafter convicted of felony;¹ and in 1901 to those who were serving at that time a fixed term of imprisonment.²

¹ *Laws*, 1899, pp. 511-512.

² *Ibid.*, 1901, p. 320.

After a period of observation extending over four years the conclusion drawn, is that these laws have proved very satisfactory. At first they met with serious objection. It was alleged that the laws were unconstitutional, inexpedient and sentimental. Now, the support of them is well-nigh unanimous. The Board of State Charities shows that from April 1, 1897, to October 31, 1901, the total number of prisoners paroled from the State Prison and Reformatory was 1,430; of these 246 or 17 per cent. have proved unsatisfactory. The total amount of wages earned and board received by the paroled men is \$211,707.¹

From either a penological or an economical point of view these figures indicate most gratifying results. The fear that the penal system would lose its deterrent effect, because prisoners would be discharged after serving a short sentence, has also been shown to be groundless. The last 300 prisoners received at the Indiana Prison South, under the old system, not including life or Federal prisoners, served an average term of one year, ten months and twenty-four days per man. The first 300 under the new law, up to March 1, 1900, served an average time of two years and twelve days, and 130 still remained in confinement.²

It thus appears that most of the particulars contained in the program of reform have found a place in our statutes in whole or in part. The "Reform School for Girls and Women's Prison" has been separated into two distinct institutions, the "Indiana Industrial School for Girls," and the "Indiana Women's Prison." Both institutions still remain under the management of one board.³ Non-partisan control exists by law in all institutions but the State Prison, and there by practice. The Bertillon system, a system of classification and a wage-earning system have been adopted with-

¹ *Rept Bd. St. Char.*, 1901, p. 35.

² *Rept Bd. St. Char.*, 1899, pp. 13, 14.

³ *Laws*, 1895, p. 22.

out the need of legislative enactment. The visiting of public institutions has been restricted to narrow limits. This leaves, therefore, but a few objects originally designed, unattained; the habitual criminals' law, provision for a State visitor to prisoners, and the probation law. While the Board of State Charities does not assume all the credit for this commendable work, no one can deny that their expert knowledge, unselfishness, and persistence have been the paramount influences.

(VIII) *Administrative Functions.* In direct administration the Board of State Charities has not been granted very extensive powers. The administration of the compulsory education law is imposed in part upon it. The operations of this law have been discussed on preceding pages,¹ and need not be considered further in this place. The Board has considerable discretionary power in connection with the formulation of rules and regulations to assist in the execution of the act² governing the placing-out of dependent children. It appoints the State Agent and receives reports from him and the managers of orphan asylums.³

The Importation of Dependent Children. The Board of State Charities has the general supervision and management of the law regulating the importation of dependent children into this State and is given full authority to make rules and regulations necessary to carry it into effect; provided they are not inconsistent with the provisions of the law. The act makes it unlawful for any person, association or institution to bring or send into the State any dependent children for the purpose of placing them in homes in Indiana, without first obtaining the written consent of the Board of State Charities, and giving an indemnity bond in favor of the State in the penal sum of \$10,000 conditioned as follows: that

¹ See pages 109-111 above.

² *Laws*, 1897, pp. 44-48.

³ See pages 185-187 above.

they will not send into the State any child that is incorrigible or of unsound mind or body; that they will immediately report to the Board of State Charities the name and age of the child and the name and residence of the person with whom it is placed; that if such child, before it reaches the age of twenty-one, becomes a public burden they will remove it from the State; that if any such child be convicted of crime or misdemeanor and be imprisoned within three years from the time of its arrival they will remove it from the State upon its being released, and for failure to do this will forfeit to the State \$1,000 as a penalty; that they will place such children under written contract; that they will properly supervise their care and training and will have a responsible agent visit them once in each year; and that they will report to the Board of State Charities as they may be required to do so from time to time.¹

(IX) *The Educative Functions.* The secret of the great influence of the Board lies in the fact that they have not attempted to force legislation in the face of a popular dissent. They have appreciated that no effective reforms can be permanently secured unless they are supported by a hearty public approval. They recognized that their work was "peculiarly one of education and demonstration." In consequence they have patiently pursued a "waiting" policy, confidently relying upon the wisdom and prudence and practicability of their proposals finding a way to the popular conscience and will. The activity of the Board in educating popular opinion and stimulating official interest and pride in the institutions, is possibly the greatest benefit conferred by it. By means of the addresses, lectures and consultations of its Secretary and members, it has helped to arouse a popular interest in scientific methods of charity.

One of the greatest services of the Board has been that

¹ *Laws*, 1899, pp. 41-3.

of collecting, tabulating and publishing statistical information. Its reliable reports are of great value to students of sociology, officers of institutions and the general public.

Another valuable feature of their work is the system of registration which was begun during the first year of the Board's existence. Here in its office is a compilation of the histories, habits and movements of the dependent and defective elements of population. It now includes records of all paupers and dependent children in county poor asylums and orphans' homes, and of all the inmates of all the State institutions except the school for the blind and the soldiers' home. This information has been of great assistance to the legislators in the framing of laws. At the same time it has often enabled the Board to answer satisfactorily the anxious inquiries of persons concerning their friends or relatives who are inmates of the hospitals for the insane.¹

In 1890 it inaugurated a series of annual conventions of township trustees and county commissioners. These meetings gave opportunity for consideration in a practical way of many questions relating to local charitable and correctional activities. The Board learned of the actual needs and difficulties of the system and thus avoided the danger of theoretical and ill-judged remedies. The local officials learned that the motives actuating the Board were those of sympathy and helpfulness. In such a way the keeping of uniform records, the use of uniform blanks for reports and the suppression of professional pauperism and the tramp nuisance were in part accomplished before they were made compulsory by law.

In the same year it organized and established the State Conference of Charities. In 1893 this organization was put upon an independent basis with the hearty co-operation of the Board. Meetings have been held annually in

¹ *Rep't Bd. St. Char.*, 1899, p. 8.

different cities of the State, thus awakening the sympathetic interest of every part of the Commonwealth. The importance of this work in the estimation of the Board may be seen from the following: "These annual meetings of persons engaged in the care of State and county institutions are creating a more enlightened and progressive spirit in their management. No influence has exerted more distinctly beneficial results in the conduct of these institutions in so short a time."¹ "This Board feels that it has accomplished nothing of more importance to the welfare of the State than its establishment of this annual conference."²

In 1890 it began the publication of a Quarterly Bulletin for the purpose of placing before a large number of citizens information concerning the management of the State and county institutions which could not be obtained in any other manner.³ In it are published the quarterly comparative exhibits of the State Charitable and Correctional Institutions. These exhibits show among other things the average cost per capita of maintenance and administration and the cost of articles of food and clothing in each institution. This publication of itself is a great check upon expenditures. If the costs of one institution are greater than those of another similarly situated, some explanation to the public and especially to the committees of the Legislature will be regarded as necessary. Officers manifest a commendable pride in conducting their institutions as economically as possible.

(X) *An Estimate of the Work of the Board of State Charities.* In consequence of twelve years experience under the supervision of the Board of State Charities and under the laws proposed by it, opposition to the Board has been transformed into sympathy with its purposes and cordial support

¹ *Rep't Bd. St. Char.*, 1893, pp. 24-5.

² *Ibid.*, 1895, p. 40.

³ *Ibid.*, 1896, p. 23.

of its recommendations. The people are proud of the progress of the State in its charitable and correctional activities, and unite with the press¹ and public officers in giving credit to the Board of State Charities for its usefulness. A few expressions of recent Governors may be cited as typical of public opinion on this question: "The closer my acquaintance with, and means of observation of, the work of the State Board of Charities, the more am I convinced of its value to the public, to the public institutions, and to the executive of the State."² "This Board is deserving of much credit. It has rendered efficient service to the State. The high standard of excellence attained in our charitable and penal institutions is due in no small degree to the wise suggestions of this Board."³ "The work of the Board of State Charities is of inestimable value. Its supervision over the benevolent, charitable and correctional institutions is of special value and adds materially to the efficient, humane and economical management of these institutions."⁴

¹ See editorial in *The Indianapolis News* for August 30, 1900.

² *Message of Governor Matthews, House Journ.*, 1895, 51-2.

³ *Message of Governor Mount, 1859, House Journ.*, 1899, 45.

⁴ *Message of Governor Durbin*, p. 13.

CHAPTER IV

STATE MEDICINE

WITH the increase of population and the still more rapid concentration of large masses of people within small areas, the conservation of the public health has become a problem, the solution of which calls for the highest professional skill and the most efficient methods of administration. The activities of State health authorities are numerous and vary in importance with the changing conditions of time and place. The chief of these functions are the following: the prevention of the spread of contagious and infectious diseases among men and animals; the regulation of the practice of medicine, surgery, dentistry and pharmacy; the inspection of food and drugs; the supervision of public water supplies, the disposal of sewage and the construction of public buildings; the control over the preparation of the bodies of the dead for burial and their transportation from place to place; the regulation of offensive trades and other occupations; the collection and collation of vital statistics; and the supervision of local boards of health. These powers may be consolidated in the hands of a single officer or board, or they may be distributed among a number of co-ordinate officials or boards. In Indiana the latter method prevails. In presenting this topic, the matters falling within the jurisdiction of the State Board of Health will be discussed first as being the most important.

I. HYGIENE.

(I) *Period of Decentralization.* The first laws in the in-

terest of the public health were designed to secure the purity of food.¹ At the same time the financial interests of consumers and the producers of pure or sound goods were not lost sight of by the legislators. These laws were enforced by inspectors appointed by the bodies having charge of the county business. In 1818 the intentional sale of unwholesome provisions was made a crime punishable by a fine.² This law has been repeated in every revision of the statutes since that time. In 1852 the adulteration of liquors and the sale of adulterated liquors were also put in this category.³ In 1881 the killing, for the purpose of sale, of diseased animals, the sale of the meat of any such animals or the selling of unwholesome milk, butter or cheese were also declared to be crimes against the public health. These laws were executed either by local officials having charge of market houses⁴ or by the regular courts and officers. The protection which they afforded the public was quite inadequate, for no legal agency was provided whereby the impurity of foods and liquors could be ascertained.

Special territorial laws, incorporating the towns of Brookville⁵ and Lexington,⁶ gave the town trustees power to prevent and remove nuisances. The General Assembly of the State subsequently granted the same authority to town boards by the special acts and general laws regulating the incorporation of towns.⁷ The provisions of these laws were very general. There was no mention of nuisances regarded

¹ As early as 1813, laws were passed providing for the inspection of beef, pork and flour. In 1816, tobacco was added to this list; in 1829, salt, and in 1834, lard, butter, spirits and linseed oil. *Territorial Laws*, 1813, pp. 58, 90; *Laws*, 1816-7, pp. 98, 100, 103; 1828-9, p. 72; 1833-4, pp. 151, 154.

² *Laws*, 1817-8, p. 87.

³ *Rev. Stat.*, 1852, ii, p. 435.

⁴ *Rev. Stat.*, 1852, i, pp. 210-11; *Ibid.*, 1881, sec. 3106, clauses 11, 29.

⁵ *Terr. Laws*, 1813, pp. 82 ff.

⁶ *Ibid.*, 1815, pp. 29 ff.

⁷ *Laws*, 1816-7, Jan. 1, 1817, sec. 8; 1817-8, p. 376; *Rev. Stat.*, 1824, p. 415.

as especially obnoxious. It was left to the courts to determine whether or not the alleged nuisance was one in fact, and to order its abatement. Later laws defined nuisances more particularly.

In 1836 were passed the first laws authorizing the establishment of local boards of health and giving such bodies quarantine powers. The common council of Michigan City was required to appoint annually three commissioners as a board of health. The mayor was to be president and the recorder, clerk of the board. The council also had power in their discretion to appoint a "health physician," removable at their pleasure. It was his duty to visit and inspect, at the request of the president of the board, all boats and vessels landing at the wharves, which were suspected of having on board any pestilential or infectious disease; and all stores or buildings suspected of containing unsound provisions or other damaged and unwholesome articles; and to report at once to the clerk of the board. Thereupon, the board of health, if it deemed it advisable, had power to order any such boat to any distance from the wharves, not exceeding three miles, and to enforce the order in case of neglect or refusal to comply. Every practicing physician having "a patient laboring under any malignant or yellow fever, cholera or other infectious or pestilential disease" was required to report at once to the clerk of the board of health, under penalty of a fine. All persons, non-residents of the city, having any infectious or pestilential disease and all things infected or tainted with pestilential matter could by order of the board of health be removed to some place outside of the city; and the board could order any furniture or wearing apparel destroyed, whenever they might judge it necessary for the health of the city.¹ This law also made the earliest provision for collecting vital statistics. The

¹ *Spec. Laws*, 1835-6, pp. 14, 15, 22, 23.

common council had power to direct the returning and keeping of "bills of mortality" and to impose penalties upon physicians and sextons "for any default in the premises." In the same year, the president and trustees of New Albany were granted power to abate and prevent the creation of public nuisances; to do all things necessary to prevent the introduction of infectious diseases and to preserve the health of the town; and, if they deemed it proper, to appoint a board of health.¹ These laws were, no doubt, the result of the alarm produced by the appearance of cholera in the State in 1832 and 1833,² these two cities being particularly exposed to danger from that source. They were the models of subsequent special acts extending similar powers to other towns and cities.³ The first general law for the incorporation of cities, passed in 1852, empowered common councils to establish boards of health and to invest them with all necessary powers, including the right to establish quarantine whenever such action was deemed necessary.⁴ The complete absence of any central control over local boards of health makes it impossible to ascertain the number of such boards established under this law.

II *The Establishment of the State Board of Health.* In 1854 the physicians of Elkhart, Grant and Noble counties attempted to secure the enactment of a law requiring the registration of vital statistics; but they were unsuccessful. In the following year the first effort to secure a public health law was made by the Indiana State Medical Society, a voluntary association organized in 1849.⁵

¹ *Spec. Laws*, 1835-6, p. 80.

² Holloway, W. R., *Indianapolis*, pp. 44-5.

³ *Spec. Laws*, 1836-7, p. 213; 1838-9, p. 110; 1839-40, pp. 24, 25, 39; 1845-6 p. 114; 1846-7, p. 15; 1847-8, p. 141.

⁴ *Rev. Stat.*, 1852, i, p. 211.

⁵ *Report State Board of Health*, 1898, p. 114.

For twenty years little encouragement was received by those interested in this project. Governor Hendricks was the first prominent State official to espouse their cause. At the request of a large number of the most eminent men of the medical profession of Indiana, he called the attention of the General Assembly in 1877 to the importance of providing by law for the establishment of a State Board of Health.¹

The Indiana State Medical Society at its session in 1875 appointed a committee on the subject of a "State Board of Health." In 1878 it was resolved to add to this committee a competent civil engineer and the State Geologist as an *ex-officio* member, and to call this body the State Health Commission. The duties of this commission were to make investigations as to the causes of diseases and the means of preventing their spread, and to petition the Legislature to confer upon them police power in order to enforce what measures they deemed necessary to attain these objects.

During the year 1879 the State Commission formed district health commissions, each consisting of a chairman and a member from each county in the district. It was the duty of these local health commissions to collect sanitary and vital statistics in their localities and to report them to the secretary of the State Health Commission. The State Medical Society in May, 1880, directed each county medical society to require each of its members to keep a record of births and deaths, to note any epidemic or endemic diseases in their localities and such other vital and sanitary facts as they might deem proper, and to report to the local health commission. The secretary of the district commission was directed to report to the State Health Commission, which, in turn, was to report to the State Medical Society. Here

¹ *Message, Doc. Journ.*, 1877, p. 23. A bill to this effect was passed by the Senate, but failed to become a law because the Senate refused to concur in amendments made by the House. *Rept. St. Bd. Health*, 1898, p. 115.

was a voluntary organization which, according to the report of the State Health Commission, needed only two essentials to make it complete: police power conferred by the State upon the commissions; and means to defray the necessary expenses.¹ This report, containing a synopsis of a bill to establish a State Board of Health and local boards, was submitted by the Governor to the Legislature. That body in 1881 enacted a law which was in its general outline similar to the one proposed by the commission.

The Operation of the Law. The State Board of Health consisted of five members, of whom four were appointed by the Governor with the consent of the Senate and one, the Secretary, was elected by these four. The Board was granted "the general supervision of the interests of the health and life of the citizens of the State" with power to gather statistics and to make investigations respecting the causes of disease and especially of epidemics.

The trustees of each town, the mayor and common council of each city (except when a regular board of health had already been constituted by ordinance) and the board of county commissioners were declared boards of health, *ex officio*, for their respective municipalities to serve without compensation. Each local board was annually to complete its organization by the election of some physician as secretary, who was to be known as the "health officer." The town and city boards were subordinate to the county board; and the county board was required to "act in conjunction with the State Board of Health." The local boards were required to collect and to report to the State Board of Health such facts and statistics as were called for under the law or under the rules of the State Board.² The function of the

¹ *Report of Ind. State Health Commission for 1879*, found in *The Report of the Bureau of Statistics*, 1879, pp. 458-462.

² *Laws*, 1881, pp. 37 ff.

latter was chiefly advisory; that of the local boards, executive.

The law secured a greater degree of centralization than had prevailed before. In some respects, however, its operation was unsatisfactory. It was somewhat indefinite as to the duties and powers of the respective boards. The subordination of a city or town board of health to that of the county in which it was located was convenient in the making of statistical reports. But as a rule the health boards of cities were more active, more competent and more public spirited than the health boards of counties, which were their superiors in authority.

The vital statistics of the State Board of Health were almost valueless, because of the failures of local physicians to report births, deaths and other data. There was scarcely any improvement in their accuracy from 1881 to 1896. This was due in part to the defective provision of the statute which made the deliberative bodies of the municipalities, boards of health *ex-officio*.¹ As a consequence the boards were composed of persons who were not experts in the subject of hygiene and who underestimated its importance. Besides, the tenure of the health officer or the secretary of the board was for only one year. In the competition for the office, underbidding was resorted to, with the result that the successful applicant had often little ability and no professional interest in the work of the office.²

Several requests were made of the Legislature for an enlargement of the executive powers of the State Board and for a change in its composition. But almost no extension was made of its original powers until 1899 and 1901.

It must not, however, be inferred that these health laws, although imperfect, were worthless. On the contrary, they

¹ See page 218 above for provision and the exception.

² *Report of State Board of Health, 1898*, pp. 119, 120.

proved to be of great value. Perhaps the greatest service of the State Board of Health during this period was rendered in educating the people to appreciate the necessity of a careful observance of hygienic and sanitary laws. As the public grew more familiar with the operations of the various health organizations and the objects to be attained, the more popular the law became, and the more readily the rules and regulations of the State Board were observed.¹ The actual results of the work of the Board and its present functions will be more fully discussed in the following section.

III. *The Present Organization and Functions of the State Board of Health.* (a) *The Composition and Organization of the Board.* The State Board of Health is composed of five members. Four of these are designated by a board of appointment consisting of the Governor, Secretary of State and Auditor of State. These appointees elect for a term of four years a Secretary, who thereby becomes a member of the Board. They choose one of their own number President for a term of two years. All the members except the Secretary serve without compensation. The Board is required to meet quarterly in Indianapolis and at such other times and places as they may deem expedient.²

The Secretary of the Board must be a physician. He is declared to be the executive officer of the Board and the Health Officer of the State. He has charge of the records, books and property of the Board. He is the medium of communication with the local boards of health. It is his duty to prepare instructions and blank forms of returns and send them to the clerks of the local boards. He is required, through an annual report or otherwise, to disseminate among the people information derived from the statistical reports and knowledge respecting diseases and hygiene.³

¹ *Message of Governor Gray, Sen. Journ.*, 1887, p. 54.

² *Laws*, 1891, pp. 15, 16; 1899, pp. 17 ff.

³ *Ibid.*, 1891, p. 16.

(b) *The General Powers of the Board.* The general powers of the Board are set forth in the following words: "The State Board of Health shall have the general supervision of the health and life of the citizens of the State. They shall study the vital statistics and endeavor to make intelligent and profitable use of the collected records of death and sickness among the people; they shall make sanitary investigations and inquiries respecting the causes of diseases and especially of epidemics; the causes of mortality and the effects of localities, employments, conditions, habits and circumstances, on the health of the people."¹

The State Board is vested with a qualified legislative power under the following clause: "They shall adopt rules and by-laws subject to the provisions of this act and in harmony with other statutes in relation to the public health, to prevent outbreaks and the spread of contagious, infectious and other diseases, and shall promulgate such rules by sending a copy of the same to the Secretary of the County Board of Health, and the commissioners of said county shall cause such rules to be published."² As the constitutionality of this grant of power has been upheld by the Supreme Court,³ these regulations have the force of statutes.

(c) *The Control over the Local Boards.* The local boards of health are still composed of *ex-officio* members who elect a secretary or health officer for a term of four years. The local health officer must now be a licensed physician, and if not informed at the time of his appointment in hygiene and sanitary science, he must so inform himself according to the requirements of the State Board. His compensation is fixed in proportion to the population of his town, city or county.⁴

¹ *Laws*, 1891, p. 17.

² *Ibid.*, 1881, p. 37; 1899, p. 17.

³ 10 *Indiana Reports, Appellate Court*, pp. 550 ff.

⁴ *Laws*, 1899, p. 18. See also page 218 above.

It is the duty of the local boards to "protect the public health by the removal of causes of disease when known, and in all cases to take prompt action to arrest the spread of contagious and infectious diseases; to abate and remove nuisances dangerous to the public health, as directed or approved by the State Board of Health and perform such other duties as may from time to time be required of them by the State Board of Health pertaining to the health of the people." A much more prompt and effective administration is secured by conferring upon all local health officers "the statutory and common law powers of constables in all matters pertaining to the public health." Still more important is the provision that the State Board of Health shall have power to remove at any time after five days' notice and due hearing any health officer for intemperance or for failure to collect statistics, obey rules and by-laws, keep records, make report or answer letters of inquiry of the State Board concerning the health of the people.¹ A pointed warning is usually sufficient to secure prompt compliance with all duties and regulations.

(d) *The Prevention of the Spread of Contagious Diseases.* The most important duty of boards of health is the localization and extermination of contagious and infectious diseases. The State Board has authority to make rules and regulations for the management and control of these diseases.²

The first thing necessary to attain this end is to have prompt notification given to health officers of the existence of such diseases. By law it is made the duty of all physicians to report immediately to the secretary of the local board of health all cases of contagious diseases as are specified by the State Board.³ By a rule of the Board, the same

¹ *Laws*, 1899, pp. 18, 19.

² *Ibid.*, 1881, pp. 37-8; 1899, pp. 17, 19.

³ *Ibid.*, 1899, p. 19. For the diseases which have been designated by the board as communicable and dangerous to the public health, see *State Bd. of Health Rep't*, 1898-9, p. 159, Rule 1.

duty is imposed upon any other person who knows of any such case.¹ The State Board has at its disposal a small fund to conduct bacteriological examinations for the diagnosis of diseases. Physicians are entitled to aid from this source in determining the character of difficult or doubtful cases. It is to be regretted that there is not more adequate provision for this work.

The next step is to secure the complete isolation of the persons who are suffering from the disease or who have been exposed to it. To effect this, the State Board has declared it unlawful for such persons to mingle with their fellow citizens on the streets or in public gatherings without having procured a permit from the county or local health officer. In certain cases quarantine may be established.

In case of death from any virulent contagious disease, the preparation and interment of the dead bodies must be in the manner prescribed by the rules of the Board. Finally, successful disinfection must be had. The method of accomplishing this is also minutely described.²

Furthermore, the State Board has prohibited the attendance at public schools of children affected with any communicable disease dangerous to the public health;³ they have excluded from schools the use of slates; they have forbidden, if small pox is prevalent, the admission of any person, either as teacher or pupil, into any public or private school or institution of learning until after he has been successfully vaccinated.⁴ They have given local boards of health supervision over the location, drainage, water-supply, heating, ventilation, plumbing and disposal of all excreta of all school-houses and public buildings within their jurisdic-

¹ *St. Bd. of Health Rep't*, 1898-9, p. 159, Rule 6.

² *Rep't St. Bd. of Health*, 1898-9, pp. 159-162.

³ *Ibid.*, p. 159.

⁴ *Rep't St. Bd. Health*, 1884, p. 46. *Blue vs. Beach*, 155 *Ind. Rep'ts*, pp. 121 ff.

tion.¹ They have also imposed stringent rules upon all common carriers in the State in respect to the transportation of persons sick of, or suspected of being sick of, certain contagious diseases.²

In case of the disobedience of any of these rules, the health officers may invoke the aid of the courts. Persons failing or refusing to comply with these rules are deemed guilty of a misdemeanor and upon conviction are subject to a fine.³

There has been some opposition to the enforcement of these regulations; but, in general, it may be said that the people have recognized their expediency, even though expense and inconvenience may be caused by their enforcement.

(e) *The Supervision of Public Buildings.* Another function of the health authorities closely connected with the preceding one is the control over public buildings. Under the first law the Board had only advisory powers in this matter.

One of the first tasks undertaken by the Board was a sanitary survey of the school-houses. The surveys revealed a general unsanitary condition. The Secretary made many valuable suggestions as to the surroundings of school-houses, their ventilation and heating, the location of windows and blackboards, water-supply, water closets, vaccination and contagious diseases.⁴ In the following year a similar examination was made of the county jails and poor asylums. An almost universal unsanitary condition was disclosed, and in many counties the buildings were pronounced "a disgrace to our Christian civilization."⁵ The advice of the Secretary was

¹ *Rep't St. Bd. Health*, 1899, p. 159.

² *Ibid.*, pp. 164-5.

³ *Ibid.*, p. 165; and *Laws*, 1899, p. 20.

⁴ *Ibid.*, 1883, pp. 25-32; 1884, pp. 34-46.

⁵ *Ibid.*, 1884, pp. 28-30.

courteously received, but not much improvement was made in the improper conditions.

In 1891 the law was so modified as to confer upon the State Board of Health power to control the sanitation of any public building or institution.¹ In order to carry this authority into execution, the State Board has given to the local health boards supervision over these matters. No school-house or other public building may be erected until the plans thereof have been submitted to, and have received the approval of, the local board of health having the proper jurisdiction over them. In the case of any public building already constructed, it is the duty of the local board of health, upon notification, to examine into the location, drainage, water-supply, heating, ventilation, plumbing and disposal of excreta of any such building. If the conditions are deemed detrimental to the public health, it is the duty of the local board of health immediately to notify the proper officer having charge of the building of the nature of the existing defect and of the method of correcting the evil. Thereupon, it is the duty of this officer to cause the changes recommended by the board to be made within ten days. It is unlawful to permit the evil to continue longer. An appeal may be taken to the State Board of Health; and pending the appeal the order of the local board must stand.² Should the local board refuse to act, the complainant may present the facts to the Secretary of the State Board, who may, after examination, direct the local board to take action. If the officials having charge of the condemned building refuse to obey the order of the State Board, resort must be had to the courts to compel compliance. The central officers have been very reluctant to invoke the aid of the courts, preferring to rely upon the justice of their demands and the good sense of the local officials.

¹ *Laws*, 1891, p. 17.

² *Rep't St. Bd. Health*, 1898-9, pp. 159, 160.

(f) *The Supervision of Public Water Supplies and the Disposal of Sewage.* The board of health has passed an order that no sewer shall be constructed by any public officer or corporation until the plans shall have been submitted to, and approved by, the local board of health having jurisdiction.¹ Cities and towns frequently ask the advice of the State Board on this subject, and several hundred letters are annually written in response to such requests.²

The subject of pure water-supplies for towns and cities is very intimately connected with the question of the disposal of sewage. Several years ago the State Board of Health recommended a law to compel cities and towns to consult that body concerning the source and quality of their public water-supplies. It was believed that this would insure greater purity of water and better engineering. Even without this statutory authority, the Board has done good service in this field. About 1894 they began to make analyses of samples of water sent from various parts of the State. Several hundred have been examined, and about fifty per cent. of these have been condemned.³ Much sickness has been prevented and death has been averted by the use of this expert knowledge.

In the central portion of the State the discharge of refuse from the increasing number of straw-board factories has caused such a pollution of the streams as to menace the public health. Popular protest led to the enactment of a law in 1901, designed to protect the interests of the people. But the law is so inadequate and its enforcement has been so obstructed by reason of a lack of laboratory facilities, that there is so far no amelioration of the offensive condition.⁴ The law forbids the discharge into any stream of

¹ *Rep't St. Bd. Health*, 1898-9, p. 159.

² *Ibid.*, 1898-9, p. 7.

³ *Ibid.*, 1898, pp. 47, 121; 1899, p. 19.

⁴ See *The Indianapolis News*, Sept. 20, 1901, p. 5, for a description of the bad state.

water, of refuse or waste-water from any manufacturing establishment of such a character as to pollute the stream, "except by, and in pursuance to, a written permission so to do, first obtained from the State Board of Health." In order to obtain such a permit, the owner of an establishment must file with the Secretary a written application, asking for the privilege, and showing that the volume of water in the stream is such that the refuse discharged in it would produce no harm to the public. If the Board finds, after an inspection of the stream, that the refuse may be safely discharged into it without injury, they may grant a permit for a limited period, revocable by the Board at any time.' The operation of the law has not allayed the opposition of the public to this dangerous practice of manufacturing companies.

As evidence of the growing importance of these subjects, it may be stated that in 1860 less than one per cent. of the population of Indiana was supplied with public water, and by 1896-7 the number had increased to 30.5 per cent. In the same year the percentage of population living in sewered towns was 18.² With the increase of population and the development of manufacturing industries, the question of sewage disposal and of pure water-supplies for cities will become more and more serious. It grows more evident every year that these matters can not be left to each individual community to settle as it pleases, irrespective of the larger interests of the whole State. Because they are not purely local questions, the safest and wisest policy seems to be to endow some central board with supervisory power over the whole matter.

(g) *The Inspection of Food and Drugs.* The early legisla-

¹ *Laws*, 1901, pp. 96-7.

² Abbott, S. W., *The Past and Present Condition of Public Hygiene and State Medicine*, pp. 39, 43.

tion in this connection and its insufficiency have already been considered.¹ A law of 1889 prohibited the sale of fresh meats, unless the live animals from which they were derived had been inspected by an officer in the county in which they were intended for consumption.² The law was directed against the meat-packers of other States, and could not be regarded as peculiarly in the interest of the public health. A law to prevent the adulteration of vinegar was passed in 1889;³ but no provision was made for an official analysis or test.

The State Board acting under its general power to prevent the dissemination of disease promulgated rules for the care and management of dairies. They made several official investigations and condemned certain sources of the milk supply. They also analyzed samples of food submitted to them, but had no authority to prevent the sale of adulterated articles of food.

An act forbidding the manufacture or sale of any adulterated foods or drugs was passed in 1899. It defines with great minuteness the meaning of the terms; places the enforcement of the law in the hands of the State Board of Health; and makes the Secretary of that board the State inspector of foods and drugs, and every local health officer a food and drug inspector, subordinate to the State Board of Health. Any person selling, offering or exposing for sale any drug or article of food included within the provisions of this act is required to furnish a sample sufficient for analysis to any analyst or other agent appointed under this act, who applies to him for the purpose and tenders to him its value. There is a penalty for obstructing an officer in the performance of his duty and for the violation of the law. The articles condemned must be forfeited and destroyed.⁴

¹ See page 214 above.

² *Ibid.*, 1889, p. 123-4.

³ *Laws*, 1889, p. 150.

⁴ *Ibid.*, 1899, pp. 189-191.

Under the powers granted by this act, the State Board of Health has prepared rules prescribing minimum standards for foods and drugs, defining specific adulteration and regulating the methods of collecting and examining drugs and articles of food.¹ However, the enforcement of the pure food law has been practically frustrated because of insufficient money and lack of laboratory facilities.² It is also the duty of the State Board of Health to co-operate in the enforcement of the act forbidding the sale of impure oils and to bring all violations of it to the attention of the grand juries.³

The administration of the act of 1901, providing for the sanitation of all food-producing establishments, the health of the operatives and the purity and wholesomeness of the food-products is placed in charge of the department of inspection; but any local health officer has power at any time to inspect such establishments.⁴

(h) *The Regulation of the Transportation of the Bodies of Deceased Persons.* Until recently the transportation of dead bodies was not carefully controlled. As a result, contagious diseases were often carelessly transmitted. The interstate transportation was especially difficult to regulate. In 1897, the conference of State Boards of Health, at Nashville, Tennessee, in conjunction with the National Baggage Agent's Association and the National Funeral Directors' Association, adopted a set of rules governing the transportation of dead bodies. These regulations were accepted by the State Board of Health and put into force March 5, 1899.⁵

(i) *The Collection of Vital Statistics.* The State Board of Health has supervision of the registration of births,

¹ *Rep't St. Bd. Health*, 1898-9, pp. 155-158.

² *Ibid.*, 1898-9, p. 10. See also *The Indianapolis News*, Sept. 6, 1901.

³ *Laws*, 1901, pp. 33-4.

⁴ *Ibid.*, 1901, pp. 42-3.

⁵ *Rep't St. Bd. Health*, 1898-9, pp. 56-8 and 262. See below, page 240.

deaths and marriages. They prepare the forms necessary for the thorough registration and report of vital and sanitary statistics. The clerk of the Circuit Court of each county is required to report monthly to the secretary of the county board of health the number of marriages and such facts relating to them as may be called for by the State Board.¹ All local boards of health are required to keep complete records, according to form prescribed, of all marriages, births and deaths.² It is the duty of the secretary of the board of health of each county to report such facts and statistics as may be required, under instructions from, and in accordance with blanks furnished by, the State Board. It is also the duty of the secretaries of the town and city boards of health to report to their respective boards such facts and statistics as might be called for by the State Board through the county boards. In order that the local boards may obtain authentic information, it is made the duty of all physicians and accoucheurs to report to the proper board of health all births and deaths which occur under their supervision with a certificate of the cause of death and such correlative facts as may be required in the blanks furnished by the Board.³ Undertakers, sextons or other persons are forbidden to bury any dead body without a permit from the county, city or town board of health. This permit is issued only upon a certificate of death, according to the form prescribed by the State Board. In case of any burial without such a permit, the coroner of the county is required to disinter the body, hold an inquest and make a return within three days to the nearest local health officer.⁴ These seem unusual powers to confer upon a central authority and can

¹ *Laws*, 1891, pp. 17, 19.

² *Ibid.*, p. 19.

³ Births or deaths occurring when no physician or accoucheur is in attendance must be reported by the householder.

⁴ *Laws*, 1899, pp. 18-20.

be justified only on the ground that the ignorance and indifference of local communities must not be permitted, out of a misguided deference to local self-government, to endanger the life, property and happiness of the people of that larger community—the State.

V. *The Results of Central Control.* The State Board with its complete control and full understanding of the importance of accurate statistics has formulated a comprehensive plan for the collection of information, which must be used in every part of the State. The failure of health officers to obey and enforce the rules prescribed by the Board is followed by a prompt reprimand and warning; and if the offence is twice repeated, the careless or disobedient officer is discharged and very likely fined. The efficiency of this service has brought the accuracy of vital statistics almost to a state of perfection.

The close and intimate relation between the State Board and the local boards of health has had a wonderfully stimulating effect upon the latter. Prior to 1881 many of the secretaries of the local boards "simply drew their salaries and did as little work as possible." Now these officers are generally careful in keeping their records, prompt in making reports and enthusiastic in performing their duties. In 1890 the State Board inaugurated an Annual Conference of Health Officers which has proved of great service.

Numerous instances might be cited of improved sanitary conditions in towns and cities which have been due in a great part to the advisory or administrative authority of the State Board of Health.¹ It has prepared a health ordinance

¹In the town of ———, prior to three years ago, the health was notoriously bad. A sanitary survey, made by the State Health officer, developed the fact that there was not a dry cellar in the town. Sanitary administration had not taken hold of the matter of the removal of garbage and the proper disposal of sewage. After due consideration, a sanitary engineer was hired to lay out the whole town in a complete system of sewers, which is being built as rapidly as possible. "An

which has been adopted in a number of towns, which prior to that time had no such ordinance.

In respect to zymotic diseases there certainly has been a decrease in the number of cases. This fact can not be established by statistics because of their incompleteness in the first years under the law. This improvement can be fairly ascribed to the influence of the State Board. Its circulars upon the prevention of communicable diseases and its prompt action in enforcing the law when such diseases are discovered, have materially reduced the number of deaths which would otherwise have occurred. "The State Board of Health has been active and alert in meeting threatened dangers, [from small-pox] and through its labors is constantly bringing to the public mind the importance of more perfect sanitation."¹

The following comment is a fair reflection of the sentiment which the intelligent public entertains towards this Board:

"The State Board of Health offers a fine example of efficient service. It has brought the whole subject of public health from a stage of neglect and ignorance, in which disease riots, to the stage where much thorough work has been done, and where public attention and interest have been aroused."²

inspection of the town at this date will show that there is probably not a wet cellar in the town, and the old mud-holes and sinks which were found upon vacant lots, and even in the middle of the streets, have disappeared forever." In the city of ——— the influence of the State Board of Health was a potent force in securing the construction of a sewerage system and the establishment of a sanitary abattoir in place of the unsanitary slaughterhouses which formerly existed there. In still another city, municipal improvements in the way of sewers, paved streets and removal of dilapidated buildings unfit for habitation, were largely the result of recommendations made by the State Health Officer.

¹ *Message of Governor Matthews, House Journ.*, 1895, p. 51.

² Editorial in *The Indianapolis News*, Dec. 3, 1901.

2. MEDICAL EXAMINATION AND REGISTRATION.

The term "State Medicine" includes not only hygiene or preventive medicine but also medical education, registration of physicians and surgeons, medical expert testimony, pharmacy, dentistry and other subjects connected with the medical profession.¹ Under a broad construction of the term it may even be made to include veterinary medicine. It is being realized more and more clearly that the most effective system of hygiene can be maintained only by having competent and educated practitioners with a high standard of professional ethics. This necessitates, therefore, that the State should exact some test of the character and the qualifications of those who assume the responsibilities of the life and death of its citizens.

I. *Early System of Licensing Physicians.* At the very first session of the General Assembly it was deemed proper to subject the practice of medicine to some regulation. Each judicial circuit was declared by law to be a medical district. The act designated certain physicians in each district who were to constitute a board of "medical censors" with authority to examine and license practitioners. As soon as the censors and licensed physicians of any district were organized, they were to "be known in law and equity as a body corporate and politic," with power to sue and be sued, to make their own by-laws, not inconsistent with the laws and constitution of the State; to admit new physicians to practice; and to expel any of their members. A copy of the by-laws and rules was required to be submitted to the General Assembly for approval.² In 1818 the Legislature urged the different medical societies to send delegates to a general convention to take into consideration the medical law of the State and to recommend modifications of it to

¹ Compare Abbott, *op. cit.*, p. 6.

² *Laws*, 1816-7, pp. 161-165.

the following session of the General Assembly.¹ In the ensuing year there was established by law a State Medical Society composed of delegates from the district societies. It was granted power to settle differences between the district medical societies, and also to decide cases appealed to it by physicians from the decisions of their respective societies. A severe penalty was imposed upon any one who practiced medicine without a license.² This society was reorganized in 1825 and was granted power to prescribe the course and the period of medical study and the qualifications necessary for a license. The censors of the district societies were authorized to examine applicants and grant licenses. The applicant had the right of appeal from the censors to the district society; and from the district society to the State society, whose decision was final.³

Evidently the law was considered imperfect; for the preamble of an act regulating medical societies, passed in 1830, related that "owing to defects in the law regulating the practice of physic in this State, the medical societies which now exist, have never been legally organized, and the provisions of the act are such as do not induce a large portion of qualified men to become members of any medical society, or sufficiently to guard against licensing unqualified men to practice medicine."

To remedy these evils the law proceeded to legalize the societies already in existence and all their previous acts, and confirmed all the powers and privileges enumerated in the act of 1825.⁴ By the omission of this law from the Revised Statutes of 1843, the public was for forty years left without any legal protection against the imposition of ignoramuses and charlatans, except that afforded by the Common Law. Not until 1881 did the criminal code contain any penalty for

¹ *Spec. Laws*, 1817-18, p. 90.

² *Laws*, 1818-19, pp. 77-8.

³ *Ibid.*, 1825, pp. 36-40.

⁴ *Rev. Stat.*, 1831, pp. 372-3.

the improper acts of those who practiced medicine.¹ An attempt to secure a registration law was made about 1850, but it was unsuccessful.²

II. *Licenses granted by the County Clerks.*—In 1857 many numerously signed petitions from various parts of the State were presented to the General Assembly, asking protection for the community by legislation against the "ignorance and incompetency of apothecaries and practitioners of medicine and surgery." The select committee of the House which had the petitions under consideration showed their comprehension of the situation. They reported that, because of (1) "The vast importance of competency in medical men to the community;" (2) "The extensive range of knowledge requisite to make them competent;" (3) "The impossibility of the masses estimating correctly the qualifications of a candidate for practice;" and (4) "The fact that many incompetent men do practice these professions," it was "not merely expedient but obligatory under the Constitution to provide by legislation for the safety and well being of the people against the ignorance of pretended physicians, surgeons and apothecaries." They recommended a law requiring all persons engaging in the practice of medicine to first procure a certificate of qualification from a Board of Medical Examiners created by the act.³ The failure of the bill to become a law was attributed to the bitter political controversy of that session.

Bills of the same tenor were subsequently introduced in

¹ The prescription of secret medicines and the prescription or administration of drugs or medicines by any one in a state of intoxication were declared to be crimes punishable by fine and imprisonment in the county jail. *Rev. Stat.*, 1881, sects. 1921-2.

² *Rep't St. Bd. Health*, 1883, p. 52.

³ *Report of the Select Committee on the Practice of Medicine and Surgery. Doc. Journ.*, 39th Sess. (1857), ii, pp. 533-6.

the General Assembly but failed to pass.¹ The lack of zeal in the promotion of a higher professional standing was due, in part, to the rivalries of the various schools of medicine which had representatives in the State. Each was afraid that discriminations would be made against it, in the event that the board should be composed of the adherents of the other schools. The prevalence of such sentiments explains the faint-hearted character of the next legislation on this subject.

In 1885 it was declared unlawful for any one to practice medicine, surgery or obstetrics in Indiana without a license. This document was to be obtained from the clerk of the circuit court of the county wherein the applicant desired to practice medicine, upon the presentation of a diploma held by him from some reputable medical college, or upon filing the affidavit of two householders that he had resided and practiced medicine and surgery in Indiana for ten years continuously.² The question of the reputableness of the medical colleges was left to the several judgments of ninety-two local officers.

The weakness of the law was still further heightened in 1891 by providing that a license granted by a county clerk authorized one to practice in any county of the State.³

III. *The State Board of Medical Registration and Examination.* It was not until 1897 that an effective plan, acceptable to the leading schools, was devised and enacted into law. The Governor was authorized to appoint a State Board of Medical Registration and Examination, composed of five members. No school or system of medicine was to have a majority representation, and each of the four schools or sys-

¹ *House Journ.*, 1881, pp. 126, 160; *Sen. Journ.*, 1881, pp. 95, 696.

² Or had practiced for three years continuously and had taken one full course of lectures in some reputable medical college. *Laws, Spec. Sess.*, 1885, pp. 197, 199.

³ *Laws*, 1891, p. 396.

tems having the largest numerical representation in the State was entitled to at least one representative on the Board. The Governor had power to remove any member for a good cause. The county clerks still had authority to issue the licenses which were valid in their respective counties; but their discretionary power was taken away. They could grant licenses only upon the presentation by the applicant of a certificate issued by the State Board of Medical Registration and Examination. Such a certificate could be obtained upon the submission of a diploma from a recognized medical college, upon the presentation of a license held by the applicant at the time of the passage of the law or upon examination by the board. They had power to establish the minimum requirements which were necessary to secure a certificate upon examination. What is more important, they could determine the minimum requirements and rules for the recognition of medical colleges. The applicant, if he should fail to pass an examination, had the right of appeal to the Circuit or Superior Court of the proper county requiring the Board to show cause why he should not be permitted to practice medicine. This limitation upon the power of the Board was believed to be in the interest of the personal rights of the individual. It was made the duty of the prosecuting attorney, upon the complaint of the Board, to prosecute any violation of the law. The Board could refuse to grant a license to any person guilty of felony or gross immorality or addicted to the liquor or drug habit to such a degree as to render him unfit to practice medicine or surgery; and it could, after notice and hearing before the Judge of the Circuit Court, revoke a license for like cause.¹ Two years later some minor changes were made.²

In 1901 the meaning of the "practice of medicine" was

¹ *Laws*, 1897, pp. 255-260.

² *Ibid.*, pp. 247-253.

defined more precisely. An amendment was also made which provides that after January 1, 1905, "no certificate shall be issued to any person whomsoever until he shall have satisfied the said board that he has graduated at a reputable medical college" maintaining the standard prescribed by the Board, "and shall have passed before said board a satisfactory examination as to his qualifications to practice medicine, surgery and obstetrics."¹

In some quarters there has been a disposition to uphold the "personal liberty" of the man who may wish to call in a doctor who has not and cannot meet the requirements prescribed by the law and the rules of the Board; but the latter has insisted upon its rights under the law. As results of this legislation, "a large number who were devoid of medical education have either quit the practice or left the State," and the standards of the medical colleges within the State have been raised.²

3. REGULATION OF THE PRACTICE OF DENTISTRY.

Legislation regulating the practice of dentistry has had the same general trend as that controlling the practice of medicine.³ The present law⁴ is modeled after the act of 1897 regulating the licensing of physicians. It provides for a State Board of Dental Examiners, consisting of five reputable dentists, appointed biennially, one by the Governor, one by the State Board of Health, and three by the Indiana State Dental Association (a private corporation). This Board has substantially the same control over the practitioners of dentistry that the State Board of Medical Registration and Examination exercises over physicians and surgeons.

¹ *Laws*, 1901, pp. 478, 481.

² *Report of the State Board of Medical Registration and Examination*, 1898-1899, pp. 5, 6.

³ See *Laws, Spec. Sess.*, 1879, pp. 122-3; 1887, pp. 58-9.

⁴ *Laws*, 1899, pp. 479-484.

4. THE REGULATION OF THE PRACTICE OF PHARMACY.

In the sale of drugs and medicines the public are exposed to similar risks and dangers, because of the ignorance or incompetency of the vendors of these articles. Consequently there has been felt the same need of legal protection.

For twenty years bills regulating the sale of these commodities were from time to time introduced in the General Assembly¹ only to be defeated. In 1899 a law was enacted designed "to protect the people by requiring all persons selling at retail or compounding for sale at retail any poison or compound containing a poison (with certain exceptions²) to be duly licensed." To carry out the provisions of the act, the Governor is authorized to appoint a Board of Pharmacy, consisting of five pharmacists of recognized experience and ability. The Governor has power to remove any member for cause. The Board has considerable discretion as to the adoption of such rules as it may deem necessary to secure the proper enforcement of the act. The Board issues licenses as registered pharmacists³ upon the submission of evidence satisfactory to it of one of the following qualifications: The proprietorship or management of a store or pharmacy in which physicians' prescriptions are compounded; experience as a clerk in such a store for four years immediately preceding the application; or ability to pass a satisfactory examination and four years experience.⁴ Lists of registered pharmacists and registered assistant pharmacists are filed with the Secretary of State.

¹ *House Journ.*, 1881, pp. 456, 1350-2; 1889, pp. 74, 738, 743; 1895, pp. 103, 420; 1897, pp. 971, 1357, 1547, 1607.

² General merchants are permitted to sell certain staple articles without a license.

³ Provision is also made for the licensing of registered assistant pharmacists.

⁴ *Laws*, 1899, pp. 159-163. In case an applicant is a graduate of a school of pharmacy having the standard and the requirements satisfactory to the Board, the time actually spent in attendance is accepted in lieu of an equivalent period in a store or pharmacy.

5. THE LICENSING OF EMBALMERS.

The proper care, embalming and transportation of the bodies of deceased persons and thorough disinfection are scarcely less important to the public health of the State than high professional skill in the treatment of disease. During the last decade several attempts were made to secure legislation providing for the better protection of life and health by the creation of a system of examination, registration and licensing of undertakers.¹

In the absence of any statute regulating this profession, the State Board of Health in 1898 entered into a voluntary agreement with the Indiana State Funeral Directors' Association, for the purpose of carrying out the regulations governing the transportation of dead bodies.² The State Board of Health appointed from the members of the Funeral Directors' Association an examining board which prepared and adopted, with the approval of the State Board of Health, rules governing the examination of persons who desired to be recommended by the examining board to the State Board of Health. The State Board of Health granted certificates only to those persons so recommended, and issued annually a list of the registered embalmers who were duly qualified to prepare for transportation the bodies of those who had died of infectious or contagious diseases. The State Board of Health reserved the power to refuse or revoke a license on account of criminal acts, drunkenness, or failure to prepare a body for transportation exactly according to rules.³ In 1901 a separate board was created with authority in this field. Provision was made for a State Board of Embalmers, consisting of five members appointed by the Gov-

¹ *Sen. Journ.*, 1893, pp. 81, 513; 1895, p. 550; 1897, p. 194; and *House Journ.*, 1893, pp. 133, 898; 1897, pp. 319, 811; 1899, pp. 157, 427.

² See page 229, above.

³ *Rep'ts St. Bd. of Health*, 1897-8, pp. 44-5; 1898-9, pp. 56-59, 134.

error. Four of these members must be practical and practicing embalmers and one a regularly registered practicing physician. This board has power after the examination of applicants upon the subjects of sanitation, disinfection and the care, disposition and preservation of deceased persons, to grant licenses to practice the profession of embalming for one year. A renewal may be had each year without further examination. A penalty is imposed upon persons who practice the profession of embalming without a license. The licenses issued to embalmers by the State Board of Health prior to the enactment of this law were legalized.¹

6. THE PREVENTION AND SUPPRESSION OF THE DISEASES OF ANIMALS.

The character of the health conditions among animals has a vital importance to the public health of the community for two reasons: a large proportion of man's food is composed of animal products; and many infectious diseases among domestic animals are communicable to the human species. Hence, in the effort to safeguard property and human life, it has been found necessary to provide scientific methods of dealing with the diseases of the brute creation.

The early laws of Indiana on this subject were enacted solely in the interest of property rights.² Since no special officers were charged with the enforcement of these laws their execution was left to the regular courts and peace officers.

I. *The State Live Stock Sanitary Commission.* The Statutes organizing the State Board of Health did not directly place the control of diseases of animals under its jurisdiction. But the Board considered the influences of such dis-

¹ *Laws*, 1901, pp. 562-4.

² *Ibid.*, 1840-1, p. 146; 1867, pp. 136-7, 189; 1869 (*Reg. Sess.*), pp. 28-30.

eases upon the public health of so great consequence, that they adopted a rule requiring local health officers to take cognizance of all violations of statutes in reference to diseased animals,¹ and to cause a rigid enforcement of the laws. The Board urged the necessity of placing the diseases of domestic animals under its immediate supervision, and of providing for the appointment by the Governor of a State veterinary surgeon whose work should be under the auspices of the Board.²

The presence of pleuro-pneumonia among the cattle in some sections of Indiana and in adjoining States³ led, in 1889, to extensive legislation upon this subject and the establishment of the State Live Stock Sanitary Commission.⁴ This board consisted of three commissioners, who were practical agriculturists, identified with the live stock interests. They were appointed by the Governor upon nomination by the State Board of Agriculture. The commission in turn appointed an experienced veterinary surgeon for the State. In the execution of its duty to protect the health of domestic animals from all contagious or infectious diseases of a malignant character, the commission had authority to establish and enforce such quarantine, sanitary and other regulations as it deemed necessary.

The secretaries of the county boards of health were required to co-operate with the commission. Because of the divided authority of the commission, the operation of the law was not satisfactory.⁵

¹ See page 214, above.

² *Rep't St. Bd. Health*, 1884, pp. 67-8.

³ *Messages of Governor Gray*, *Sen. Journ.*, 1887, p. 57; and *House Journ.*, 1889, p. 46.

⁴ *Laws*, 1889, pp. 380-7.

⁵ See *Message of Governor Matthews*, *House Journ.*, 1897, p. 36; also *Message of Governor Mount*, *House Journ.*, 1899, p. 32.

II. *The State Veterinarian.* A decided improvement was made in 1901 by abolishing the old commission and establishing the office of State Veterinarian.¹ This officer is appointed by the Governor and is subject to removal by him for cause. It is his duty "to protect the health of the domestic animals of the State; to determine the most efficient and practical means for the prevention, suppression, control and eradication of dangerous, contagious and infectious diseases; and to investigate the cause, nature, means of prevention and treatment of such diseases as he may deem advisable." For these purposes he is authorized and empowered "to establish, maintain, enforce and regulate such quarantine and other measures relating to the improvement and care of animals and their products, the disinfection of suspected localities and articles, and the destruction of such animals and property as he may deem necessary; and to adopt, from time to time, all such regulations as may be necessary and proper for the carrying out of the purposes of this act."

The rules and regulations published by the State Veterinarian are declared "to have the force and effect of laws of the State." He has power to appoint and employ such assistants or agents as he may think proper. It is made the duty of the owner of an animal affected with a dangerous or contagious disease, or of any other person knowing of, or suspecting the existence of such disease, to report promptly to the local health officer, who within twenty-four hours must report the same to the State Veterinarian. It is the duty of this officer or his agent to visit the locality, make the proper examination and enforce the necessary rules and regulations. In order to make the examinations, these officers have the right at all times to enter any premises or places where domestic animals, living or dead, may be. In case it may be

¹ *Lewis*, 1901, pp. 98-102.

deemed expedient to kill any animal or destroy property to prevent the spread of disease, the State Veterinarian or his agent adjusts the claim with the owner ; provided, the amount to be paid is less than \$25. If the amount of the claim exceeds that sum, or if an agreement can not be made with the owner, the matter is referred to three appraisers appointed, one by the State Veterinarian or his agent, one by the claimant and a third by the two thus appointed. Their appraisement is to be paid by the State ; but not more than \$25 can be allowed for any infected animal, and the right to indemnity is wholly denied in certain cases. The State Veterinarian, under the power granted him, has adopted for the State the rules prepared and used by the Department of Agriculture of the United States. It is his duty to make examinations into the conditions of the live stock of the State in relation to contagious and infectious diseases, including the milk supplies of cities, towns and villages, and to take proper means to protect such milk supplies from contamination. Upon the request of the State Board of Health he is required, as far as possible, to investigate the conditions of dairies and such diseases of animals as are communicable to man. The decision of the State Veterinarian in all matters pertaining to diseases of domestic animals and his orders as to their disposition are final. He may call upon any peace officer for aid in the discharge of his duties, and such officer must give assistance.¹

The law has been in operation so short a time that conclusions as to its workings can not fairly be drawn. Already an extended study has been made of certain diseases, and all proper calls for assistance have been attended without exceeding the allowance of \$250 per month, made by law.

III. *The Regulation of Veterinary Medicine.* In 1901 for the first time the practice of veterinary medicine or surgery

¹ *Laws*, 1901, p. 102.

was regulated by law. It is made unlawful for any one to practice this profession who is not a graduate of a reputable veterinary college. An exception is made in favor of persons who have practiced for five consecutive years as a means of gaining a livelihood.¹ Any clerk of a circuit court, upon the filing with him of the necessary evidence of qualification, must issue to the applicant a certificate to practice the profession in any county of the State.* The State Board of Health furnishes the blank certificates, but has no other authority in regard to the matter. The county clerks are the sole judges of the evidence as to the qualifications. Further legislation along this line is already requested.

Much of the legislation in the field of State Medicine and Hygiene is too recent to justify any general conclusions as to its efficiency. Whatever may be its subsequent effects, it is evidence of a decided drift towards the centralization of administration. This tendency is the outgrowth of a conviction that these matters are of such importance to the public in general, that they cannot be left to individual action or local control without serious detriment to the life, health and property of the people as a whole.

¹ The law does not apply to certain operations nor to persons practicing upon their own animals.

^{*} *Laws*, 1901, pp. 421-2.

CHAPTER VI

TAXATION

I. THE TRANSITION FROM A CENTRALIZED TO A DECENTRALIZED ADMINISTRATION.

DURING the early territorial period there was close centralization in the administration of both local and territorial finances. Prior to 1792 there was no legislation in the Northwest Territory in respect to the raising and disbursement of revenue. The small expenses of the territorial government were paid out of the Federal Treasury;¹ and the insignificant costs of the local administrations were defrayed from the proceeds of fees, fines and forfeitures.

Three important laws from the standpoint of local taxation were passed in 1792. One of these was a police regulation as well as a revenue measure. The Governor was empowered to appoint in each county one or more commissioners with authority to grant licenses to any merchants, traders or inn-keepers, who were recommended by the court of the general quarter sessions. The receipts from such fees were turned into the treasuries of the respective counties.²

A second law directed the manner in which county taxes should be raised. It authorized the court of general quarter sessions of the peace to make an estimate of the amount of

¹ *U. S. Statutes at Large*, i, p. 286.

² Chase, i, *op. cit.*, p. 114. Three years later the Governor himself was directed to license the keepers of taverns and other drinking houses, upon the recommendation of the courts of general quarter sessions. *Ibid.*, p. 165.

money which they thought necessary to defray the expenses of the county for the ensuing year, specifying as nearly as possible the purposes for which the several sums would be needed.¹ This estimate was to be laid by the clerk before the Governor and Judges, who had authority to approve it, and to levy upon the inhabitants of the county the sum which they deemed requisite. The judges of the court of common pleas were to appoint annually in each town or district of the county from one to three commissioners, who constituted a board with power to assign to each district its proper share of the tax, having "special respect to wealth and numbers." In each subdivision of the county three judicious men were annually designated by the same court who assessed upon, and apportioned among, its inhabitants the amount imposed upon the district, "according to the best of their judgment in just proportion to the wealth in the county and ability to pay." Though somewhat clumsily stated, this was a recognition of the faculty theory of taxation. To prevent any partiality or injustice, it was provided that any one who thought himself unreasonably assessed had the right to petition the local courts or the General Court of the Territory for relief; and the decision of the court was final.

The third law² alluded to above empowered the Governor to appoint and commission during pleasure a "Treasurer-General of the Territory" and a treasurer in each county, who were charged with the duties usually pertaining to such offices. The Treasurer-General and the county treasurers as well were required annually to lay their accounts before the Legislature of the Territory, showing the moneys that had been received by them and how they had been disposed of. To force county treasurers to comply with this requirement it was made unlawful to levy any further assessment in any

¹ Chase, i, p. 118.

² *Ibid.*, p. 117.

county which had not rendered a satisfactory settlement to the Legislature.

In 1795 a radical departure from this compactly centralized control was made; and a field for local self-government was opened. It was no longer necessary to submit the county estimate to the Governor and Judges for their approval and authorization. The chief officers charged with the duty of carrying into effect the "law for raising county rates and levies," were three commissioners¹ in each county, appointed by the court of general quarter sessions for the term of three years. Still more democratic in its nature, was the provision for the annual election of one assessor in each township by the free males thereof. The commissioners and the assessor had the power of auditing the county accounts and of making appropriations of money for the benefit of the county. Constables were required to certify to the assessors the names of all persons residing or sojourning within their respective townships with an account of all lands, houses and other property, including "bound servants." The assessor of each township, after having received the returns of the constables, was authorized to assess equally and impartially all ratable persons, having due regard to the yearly value of the property of each. Any person thinking himself aggrieved had the right of appeal to the commissioners who might increase or diminish the assessment. The power of appointing county treasurers still rested in the hands of the Governor; but they were responsible to the local authorities instead of the central government. The control exercised by the commissioners and assessors over the local financial officers was quite extensive. They appointed a collector for each township, who was required to render an account and pay over all moneys

¹ Chase, i, p. 168-174. These officers did not perform the administrative duties now imposed upon county commissioners.

and orders promptly to the county treasurer. The latter was obliged to certify to the commissioners from time to time the amounts collected, to report any delinquency on the part of the collectors, and annually to bring his accounts into the court of the general quarter sessions and settle with the commissioners and assessors. The commissioners were empowered to fine unfaithful and delinquent collectors, who were answerable with their bodies and estates. They also had power to fine treasurers and assessors for refusing or neglecting to do their duty. The county commissioners themselves for failure to do their duty, were, in turn, subject to fines imposed by the court of the general quarter sessions; and for misbehavior they were liable to removal from office. Finally, the commissioners, assessors and treasurers, all, were required, annually to lay before the court of general quarter sessions and the grand jury of the county their books and accounts. No report to any territorial officer was required. However, the justices of the courts were themselves the appointees of the Governor of the Territory. There was, besides, an important central judicial control provided for in the law¹ establishing the higher courts. This act authorized the General Court or Supreme Court "to examine, correct, and punish the contempts, omissions and neglects, favors, corruptions and defaults of all or any of the justices of the peace, sheriffs, coroners, clerks, and other officers, within the respective counties." The first Territorial assembly in 1799 enacted a law² regulating county levies which was modeled after the act of 1795. It made no change in the method of supervision of local financial officers.

The first tax for territorial purposes was not levied until 1798,³ ten years after the organization of the Northwest

¹ Chase, i, *op. cit.*, pp. 147-150.

² *Ibid.*, pp. 272-9.

³ *Laws of Northwest Territory*, 1798, pp. 23-26; Chase, i, p. 208-9. The law was taken from the Kentucky code.

Territory. It subjected all unsettled and unimproved lands¹ to taxation. As this law was not adopted from one of the thirteen original States, it was unauthorized and was repealed in the following year. The passage in 1798 from the first grade of territorial government to the second, was attended by increased expenditures. This necessitated the enactment in 1799 of several laws in regard to taxation.² One of these imposed a tax on land.³ It authorized the courts of general quarter sessions to appoint one or more commissioners or listers for each county. It was their duty to make a list of the land owned in their districts, and to classify it according to quality and situation into three grades, each of which was taxed a certain number of cents per hundred acres. The right of appeal from the assessments to the court of general quarter sessions was granted. The form of the schedule for listers was prescribed, but no way was provided by which the territorial officers could exercise supervision over the local officials except through the courts.

When the Territory of Indiana was set off from the Northwest Territory in 1800, the form of government authorized was that of the first grade; that is, one in which the Governor and Judges had practically complete control. The first law which they adopted was this tax law of 1799, with slight modifications.⁴ In 1805, the law⁵ in regard to land taxes was elaborated. The Auditor of the Territory was to obtain from Federal officials abstracts of entries and

¹ The law was designed to place the burden of taxation upon those who failed to develop their lands and who held them for speculative purposes. A great part of such lands was owned by non-residents.

² Chase, i, pp. 231-233, 267-272, 272-279, 280.

³ *Ibid.*, pp. 267-272. It was to continue in force until the end of the next session of the Legislature.

⁴ *Terr. Laws*, 1801, p. 5.

⁵ *Ibid.*, 1805, pp. 30-33.

locations of all lands with the names of the owners, and to transmit the lists to the county assessors. The owners of lands were required to give to the assessor a true account of their holdings. The assessor was to determine the valuation of the land and to inform the owner of the amount, who had the right to appeal to the court of common pleas. It was the duty of the clerk of the court to forward one transcript of the revised abstract to the Auditor of the Territory and another copy to the House of Representatives. The Auditor of the Territory, upon these valuations fixed a tax at such rates (not exceeding those specified by law) as would produce the sum required; he then transmitted an abstract containing the names of owners, with the amount of the tax, to the collector of each county, who was to send the proceeds to the State treasury. This slight increase of central control was partially relaxed two years later. A law¹ of 1807 provided for a quadrennial assessment, made the sheriffs collectors and dispensed with the transmission of duplicates to the House of Representatives. In 1813² the office of township commissioner or lister was established. These officials, appointed by the courts of common pleas, had authority to make lists of all taxable property for both county and territorial purposes. The court³ had power to examine these lists and to lay a county tax on personal property and if necessary on land. The maximum rates and forms of the books of the commissioners were fixed by law. A closer local centralization was secured in the following year by placing the power of assessing property in the hands of a single lister in each county.⁴

From this review of the territorial legislation it is seen that

¹ *Terr. Laws*, 1807, pp. 517 ff.

² *Ibid.*, 1813, pp. 17-36.

³ After 1813, the associate judges of the circuit courts. *Terr. Laws*, 1813, pp. 124-131.

⁴ *Terr. Laws*, 1813, 2d Sess., p. 136.

the strong central supervision over State and local finances, which was exercised in the early period of territorial existence, was gradually relaxed. The justices of the courts, the county treasurers and sheriffs still owed their appointment to the Governor. This opportunity for central control was either wasted or used very ineffectively; for it was necessary to have frequent resort to legislative interference. The territorial assembly imposed heavy penalties upon the judges of the local courts for failure to appoint assessors and collectors; ¹ transferred to sheriffs the duties of certain collectors who refused to collect taxes; ² directed the delinquent assessors of designated counties to perform their duties; ³ urged the proper officers to take effective measures to compel collectors to pay all arrears due from them; ⁴ in one case appointed a lister for the county; ⁵ authorized by special law the clerk of one county to correct mistakes in the assessment of an individual taxpayer; ⁶ and even appointed a commission to determine the amount which the court of one county ⁷ should allow as compensation to the lister. At the same time it must be acknowledged, that in the administration of the State offices there was much looseness and confusion in the accounts, and that the evidence of malfeasance is strong. ⁸

Decentralization Complete. When Indiana acquired statehood, the local financial administration became in fact completely decentralized. The justices of the peace, the sheriffs, treasurers, county commissioners, the clerks and associate judges of the circuit courts were elected by the people of

¹ *Ibid.*, 1806, pp. 3-5.

² *Ibid.*, 1807, pp. 465-7.

³ *Ibid.*, 1808, p. 39.

⁴ *Ibid.*, 1808, p. 44.

⁵ *Ibid.*, 1814, pp. 13-14.

⁶ *Ibid.*, 1813, p. 48.

⁷ *Ibid.*, 1815, pp. 114, 115.

⁸ *Terr. Laws*, 1813, 2d Sess., pp. 161, 163; *House Journ.*, 1816-7, pp. 72-4; *Ibid.*, 1817-8, pp. 7, 62.

their respective districts for definite terms; and no longer depended upon the Governor for their appointments, which were terminable at his pleasure. For many years there was little tendency towards centralization. Until 1835 the State revenues¹ continued to be derived almost wholly from taxes on land and polls. County revenues were obtained from specific taxes on live stock, watches, carriages, bond servants, *et cetera*; licenses and business taxes; taxes on town lots; poll taxes; and taxes on land.

The machinery of administration was substantially the same as before. The local body having charge of the county business² supervised the administration of the local revenues and acted as a board of review³ in case taxpayers complained of their assessments. The State had no control over this administration except through the courts, and scarcely more over the collection of its own revenues. The office of county treasurer was re-established.⁴ The sheriff collected the taxes and paid the proper shares to the State Treasurer and the county treasurer.⁵ Lists of the taxable⁶ lands of the county and later certified statements of the amount of money with which the sheriff stood charged, were sent to the Auditor of State, who thus had an opportunity to determine at the time of settlement with the sheriffs the amount of delinquency.⁷ There were emphatic and repeated complaints

¹ *Laws*, 1816-7, pp. 130-140, sec. 4; 1817-8, pp. 256-273; 1819-20, pp. 150-3; 1820-1, pp. 8-9; 1821-3, pp. 105-8.

² See section 4, below, for the want of uniformity in the organization of county boards.

³ *Laws*, 1817-18, p. 261.

⁴ *Ibid.*, 1816-7, pp. 119-20.

⁵ *Ibid.*, p. 139.

⁶ Under the *Enabling Act* (Sec. 6, clause 5) and the *Ordinance of Acceptance*, lands sold by the United States lying within Indiana were exempt from taxation for the term of five years from the date of sale.

⁷ *Laws*, 1816-7, pp. 139, 145; 1819-20, pp. 150-3.

because of delays and delinquencies,¹ disregard of letters of instruction,² uncertainty of receipts,³ failure to furnish the Auditor of State with the certified statements,⁴ informality and insufficiency of bonds,⁵ indifference of prosecuting attorneys,⁶ and the omission of taxable lands from the lists⁷

These evils, however, must not be attributed entirely to the dishonesty of officials and the absence of a central control. The period from 1819 to 1824 was one of tribulation for the people of Indiana.⁸ Fevers were very prevalent and quite fatal. Purchasers of land suffered from the collapse of speculative "booms." The prices of farm products fell to one-third or one-fourth of their former values. The failure of the Bank of Vincennes entailed a loss on many people. With all of these disadvantages, it is not strange that land-holders could not pay their taxes, and that sheriffs could not force their collection even by distress. A perfect tax administrative system would have failed under such conditions. Efforts were, however, made to improve the system. Acts enjoining the prosecution of sheriffs and their securities for failure to collect moneys due the State were passed.⁹ Clerks and their sureties were made liable, in case of failure to forward the certified statements, for the

¹ *Report of Auditor*, 1823, in *Spec. Acts*, 1823-4, app. 122. "Not one in ten of the collectors settled their accounts at the treasury within the prescribed time." *Ibid.*, 1831, *House Journ.*, 1831, app. A, p. 8.

² *Report of Auditor*, 1820, *House Journ.*, 1820-1, p. 34.

³ *House Journ.*, 1822-3, p. 34.

⁴ *Rep't of Aud.*, 1821, in *Laws*, 1822-3, App., p. 158; *Message of Governor* in *House Journ.*, 1823-4, pp. 15-17.

⁵ *House Journ.*, 1823-4, pp. 15-17.

⁶ *Rep't Aud.*, 1824, in *House Journ.*, 1823-4, pp. 276-7.

⁷ *Laws*, 1825, p. 63.

⁸ "*Indiana Gleaner*," 1850, pp. 117-121.

⁹ *Laws*, 1816-7, pp. 153-4; 1819-20, pp. 78, 80; 1820-1, p. 9; *Spec. Laws* 1823-4, p. 115.

whole amount of the tax.¹ Penalties for neglect of duty by officers were increased.² In order to prevent the omission of taxable lands from the lists, the Auditor of State was instructed to procure from the United States land offices a complete register and description of all lands sold within the State. Clerks of the several counties were furnished copies of the register of lands lying within their respective counties.³ The powers and duties of the prosecuting attorney were enlarged, and his interest was stimulated by allowing him 20 per cent. of all sums recovered.⁴ Clerks were authorized to publish lists of delinquent tax-payers.⁵ With these stricter regulations and with renewed prosperity, came a readier payment of the taxes and a prompter compliance with the laws; so that we find the Auditor rejoicing that "there was but one delinquent out of sixty-three collectors for the year 1830."⁶ Henceforth, complaints on these scores grew less frequent and less serious.⁷

2. THE EQUALIZATION OF TAX ASSESSMENTS.

Up to 1830 the chief aim of those favoring modifications of the tax law had been to prevent the loss of revenue through the delinquency of tax-payers or the defalcation of officers. During the next two decades the prime object was to correct the flagrant injustice to the tax-payers which was inherent in the imperfect method of assessing land. From 1799, the listers or assessors had been instructed to tabulate the land in three classes, according to quality and advantages of situation. The law specified the rate of taxation

¹ *Rev. Stat.*, 1824, p. 349.

² *Ibid.*, 338-355.

³ *Laws*, 1825, 63-4.

⁴ *Ibid.*, pp. 70-1.

⁵ *Ibid.*, 1825-6, p. 68.

⁶ *Rep't of Auditor for 1831, House Journ.*, 1831-2, App. A, p. 7.

⁷ *Rep't of Treas. for 1830, in Laws*, 1830-3, p. 252; *Ibid.*, 1835, *Sen. Journ.*, 1835-6, p. 56; *Ibid.*, 1839, *Doc. Journ.*, *House Rep'ts*, p. 49.

on each 100 acres in each class. This method of assessment by local officers without any revision by a central authority, proved defective, unequal and expensive. Governor Noble, in 1833, made an earnest appeal for a modification of the system. He called attention to the unequal and disproportionate listing of lands in the several counties, to the continual variation in the quality of lands returned, and to the diminution of the first-rate land, notwithstanding the annual increase of the aggregate taxable lands. He urged as the sole remedy for these defects that a new listing and rating of land should be made every five years by commissioners appointed for that purpose,¹ presumably by the Governor or Legislature.

A "Limited Ad Valorem" Tax. For several years the Legislature had been considering the advisability of abandoning the specific tax on land and of substituting in its place "either a general or limited ad valorem" tax.² This change was effected by laws passed in 1835 and 1836. The new tax was not a general property tax. All real property (with specific exemptions) and certain kinds of personal property enumerated in the act, were made subject to taxation at a "fair and true valuation." The rate for State revenue was fixed by the General Assembly; that for county revenue, by the county board. Few changes were made in the administrative machinery. The assessors⁴ were required to call upon every person liable for the tax, in order to obtain a list of his property and an estimate of its value. Such lists were delivered to the county clerks, who transmitted to the Auditor of State schedules of the valuation of property in their respective counties. The Auditor presented a tab-

¹ *Message, House Journ.*, 1833-4, pp. 14, 15.

² *House Journ.*, 1827-8, pp. 279-283; 1832-3, pp. 222-4.

³ *Laws*, 1834-5, pp. 12-14, 17, 18, 20, 22; 1835-6, pp. 25, 31, 33.

⁴ One or more for each county, appointed by the county board.

ulation of these statements to the General Assembly. The forms of the assessment rolls, affidavits and returns, were prescribed in the act. The county boards, in addition to their power to hear personal complaints relative to the listing or valuation of any property and to correct errors, had also the authority to equalize the valuation of the lands between the townships of their respective counties.¹

This last provision helped to remedy the inequalities in the assessment of lands within the county; but no method was provided for correcting the inequalities among the counties. It was, therefore, quickly discerned that the easiest way for the people of any county to escape the burden of State taxes was to place a low valuation upon their property. In the second year, under the operation of the law, the Treasurer of State deplored "the imperfect character of our revenue laws in reference to assessments," and "the great carelessness and neglect" of the assessors. He estimated "the amount of revenue lost to the Treasury annually by these partial and imperfect assessments," at one-tenth of the whole amount of the actual assessments. He suggested a thorough triennial assessment "by a principal and two assistant assessors"² for the entire State. In the same year the Governor regretted the multiplication of deficiencies and declared that the errors were so manifest in the last report as to show a deficit of from two to three hundred thousand acres. He ascribed this to the mode of assessment and to the appointment of unfaithful assessors who did their duty negligently.³ The Auditor of State in 1838 pronounced the system "radically defective," and asserted

¹ *Laws*, 1834-5, pp. 12-14, 17, 18, 20, 22. Since 1792 taxpayers had had the right of appeal from the action of the listers or assessors to some local board of review. See pages 247, 248, 250, above.

² *Rept of Treas.*, 1837, *Sen. Journ.*, 1837-8, p. 44.

³ *Message of Governor Noble*, *Sen. Journ.*, 1837-8, pp. 28-30.

that unless remodeled, it would "ultimately beggar the Treasury." He affirmed that out of 8,337,122 acres of taxable lands there had been omitted from the tax lists in that year, 1,265,914 acres, having a value of \$12,659,140.¹

At the ensuing session of the Legislature, a committee of the House reported that a great inequality in the assessment value of land existed; that the committee feared there had been a wanton dereliction of duty on the part of assessors; and that there was suspicion of injustice or collusion in the assessment of lands. They recommended an inquiry into the expediency of organizing a State board of assessors, or district boards with authority and power to equalize taxation in the several counties according to the true intent and meaning of the "ad valorem" system.² The only action taken was to reorganize the local boards of equalization by adding to their membership³ the county auditor and assessor, and to denounce heavier penalties upon the members of the county board for failure or neglect to discharge their duties.⁴ Notwithstanding these changes, Governor Wallace, in 1840, asserted that the assessment of land was 2,235,906 acres less than the true amount, according to the report of the Commissioner of the General Land Office.⁵

Revision of the Tax Law. These repeated condemnations of the tax system at last produced some effect. Upon request of the House of Representatives the Auditor in 1840 submitted a report containing drafts of several laws designed to secure a more equitable and cheaper mode of assessing

¹ *Rep't of Auditor*, 1838, *Doc. Journ.*, 1838-9, pp. 173-4 and 187. In the following year, the quantity of land which escaped taxation was 1,446,802 acres. *Rep't of Auditor*, in *Laws*, 1839-40, App., pp. 94-5.

² *House Journ.*, 1838-9, pp. 268-270.

³ See page 257, above.

⁴ *Laws*, 1838-9, pp. 26-28.

⁵ *Message, Doc. Journ.*, 1840-1, *House Rep't*, p. 105.

and collecting revenue. These bills were modeled after the Ohio statutes and were enacted into law with almost no alterations. One of them created the elective office of county auditor. It seems that the business of the clerks had increased to such an extent, that either there were vexatious delays in making out the tax-duplicate, or it was pushed off upon an inexperienced deputy who neither knew nor felt the importance of having it correct.¹ This function and all others in relation to fiscal affairs heretofore performed by the clerk, were now transferred to the county auditor.² Another provided for the election of one assessor in each county, who had authority, with the approval of the county board, to appoint one or more deputies to perform any of his duties, except those of making valuations of land and serving as a member of the county board.³ It was believed that this provision would secure a more equitable and uniform assessment, especially of land, within the county. Another law made the term of the county treasurer three years, increased the amount of his bond and prescribed the manner of collecting the taxes.⁴ The duties of the different officers connected with the levying and assessing of the taxes were specified more particularly in still another act, and all personal property was made subject to taxation.

The most important law of this session provided for a change in the mode of assessing real property. Each county board was required to appoint at once an appraiser of real estate to hold office until March 1st, 1842. This seems to have been a temporary office created for the purpose of beginning anew the assessment of real estate. It was the duty of this officer after receiving from the county auditor a list of all taxable lands and town lots to appraise, upon actual

¹ *Rep't of Auditor, Dec. Journ.*, 1840-1, *House Rep't*, p. 234.

² *Laws*, 1840-1, pp. 10-17, 24.

³ *Ibid.*, pp. 25-6.

⁴ *Ibid.*, 1840-1, pp. 27-32.

⁵ *Ibid.*, pp. 34-44.

view, their true value with the value of all improvements. He was required to submit abstracts of his lists and appraisements by townships to the county auditor. The county board, the auditor and the appraiser of each county constituted a special temporary board with power to equalize the valuations of real estate by adding to or deducting from them. After corrections were made, the county auditor was further required to make out and forward to the Auditor of State a general abstract of all assessable property.

A State Board of Equalization. Most essential of all was the provision for a State Board of Equalization. The Houses by joint resolution were to elect one person resident in each judicial circuit¹ who, together with the Auditor of State, were to compose this board. Their duty was to equalize the valuation of real estate in the several counties by adding to, or deducting from, the valuations made by the appraisers and corrected by the county boards such per centum as seemed just and reasonable; but the State Board could not lessen the aggregate valuation of the State. The State Auditor was required to transmit to the several county auditors the per centum to be added to or deducted from the valuations. It was the duty of the county auditor to correct the valuation of real property in conformity therewith. The county board, auditor and assessor of each county were constituted a permanent local board of equalization. They were to meet the first Monday in June, 1842, and annually thereafter, for the purpose of hearing complaints and equalizing assessments and revaluations of all real and personal property; but they had no power to reduce the aggregate value of real property within the county as originally fixed by the State Board of Equalization.² The law made no provision for a periodical valuation or equalization. That was to be left to the judgment of subsequent Legislatures.

¹ At that time there were eleven circuits.

² *Laws, 1840-1*, pp. 3-9.

The State Board of Equalization proved to be very unpopular. It was alleged and industriously circulated, that the Board had the kingly power of augmenting the people's taxes at will. It was represented as an "iron-hearted monster and deadly foe to civil liberty."¹ In consequence of this opposition, the first bill² introduced into the House at the next session was one to abolish the State Board of Equalization. It was promptly passed by the Legislature and approved,³ the Board having had a legal existence of eleven months. However, there was some good derived from this experiment. The appraisement taken under the authority of the act of February, 1841, was not disturbed; and in the Revised Statutes of 1843 it was re-affirmed with some alterations and "considered as the grand levy of the State."⁴

The changes in regard to the powers and duties of the local officers answered "the most sanguine expectations" in the saving effected in the expense of collection, and in the addition of over 3,338,000 acres⁵ of taxable land to the assessment list in 1842. The Auditor of State attributed this chiefly to "the vigilance of the county auditors who, under the present system, can give their individual attention to the subject."⁶ The system was not popular in all parts of the State, and efforts were made to abolish the office of auditor.⁷

¹ *Sen. Journ.*, 1842-3, p. 189.

² *House Journ.*, 1841-2, p. 35.

³ *Laws*, 1841-2, p. 126, Jan. 13, 1842.

⁴ *Rev. Stat.*, 1843, p. 211.

⁵ Of the amount added, 1,249,818 acres became taxable for the first time in 1842.

The assessment of realty for the years 1842 and 1843 showed a material increase over the years 1840 and 1841.

Year.	Assessed Value of Realty in Millions.
1840.....	\$70.8
1841.....	74.4
1842.....	85.7
1843.....	88.4

⁶ *Rep't of Auditor*, 1842, *Doc. Journ.*, 1842-3, *House Rep'ts*, pp. 48, 51, 52.

⁷ *Sen. Journ.*, 1842-3, pp. 189-196.

By special legislation this was done during the next five years in twelve counties.¹

In the following years the Legislature prescribed more stringent rules in regard to bonds,² removal of delinquent officers by county boards,³ liability of counties for losses of State revenue sustained by the default of county fiscal officers,⁴ and the settlement of annual accounts.⁵ Greater odium was placed upon defaulters by the action of the House of Representatives in respect to the expulsion of members who had been guilty of defalcation;⁶ by making any county electing a public defaulter to the General Assembly liable for all the expenses of the contest of the election; by requiring the persons so elected to indemnify the county for such expenses; and by directing the Treasurer and Auditor of State to set out in their annual reports the name of any person intrusted with any funds of the State who had defaulted.⁷ There was a slight decrease in the amount of the delinquent taxes from 1843 to 1848.⁸

In 1845 the Auditor complained that the boards of equalization in some counties had reduced the valuation of lands as fixed by the State Board of Equalization in 1841 and affirmed by the Revised Statutes of 1843. He urged that such a reduction be prohibited.⁹ This was not done, but a re-appraisement of real estate was ordered which was to remain in force until altered by the Legislature. This was to

¹ *Laws*, 1843-4, p. 46; *Ibid.*, 1844-5, pp. 69, 70, 73; *Special Laws*, 1846-7, p. 119; *Local Laws*, 1844-5, pp. 107, 138, 257; 1845-6, p. 115.

² *Rev. Stat.*, 1834, p. 112; *Laws*, 1845-6, p. 18.

³ *Ibid.*, 1843, p. 195.

⁴ *Ibid.*, p. 234.

⁵ *Laws*, 1845-6, p. 61.

⁶ *House Journ.*, 1843-4, pp. 354, 365; *Doc. Journ.*, 1844-5, Pt. ii, p. 139.

⁷ *Laws*, 1845, p. 15.

⁸ *Rep't of Auditor*, 1845, *Doc. Journ.*, 1845-6, Pt. i, p. 42; *Ibid.*, 1849, *Doc. Journ.*, 1849-50, Pt. i, p. 89.

⁹ *Rep't of Auditor*, 1845, *Doc. Journ.*, 1845-6, Pt. i, p. 42.

be carried out by the regular or special assessors.¹ No provision was made for a State Board of Equalization. This was a fatal defect.² To the Auditor of State it seemed that the first requisite for improvement was the adoption of some system of State equalization. He asserted that a true valuation of all the property would increase the amount of taxables on the duplicate at least \$50,000,000.³ It was shown that the total valuation of real estate alone, as returned by the United States Marshal in 1850, was about \$33,000,000 in excess of the entire assessment for taxation in that year.⁴

A new appraisement of real estate to be valid for five years⁵ was ordered by the General Assembly in 1851.⁶ A general law for the assessment and valuation of personal property was passed at the same time. An attempt was made to secure a more accurate listing of property by requiring a more minute classification and by imposing heavier penalties on officers and on persons and corporations that failed to return the lists which the assessor left to be filled out.⁷ The operation of this law, so far as it affected personal property, was very gratifying.⁸ However, there still existed a great inequality among the various counties in the

¹ *Laws*, 1845-6, pp. 108-9.

² In thirty-one counties, the total number of acres assessed in 1847 was 93,617 less than it was in 1846; while other counties were taxed upon 214,859 acres more in 1847 than in 1846. From 1842 to 1847, fifty counties showed a decrease in the value of their lands, running from 10 to 50 per cent.; other counties, during the same period, showed an increase ranging from 10 to 25 per cent. *Doc. Journ.* 1851-2, Pt. i, p. 371.

³ *Rept of Auditor*, 1850, *Doc. Journ.*, Pt. i, pp. 56-7.

⁴ *Doc. Journ.*, 1850-1, Pt. i, p. 61, and Pt. ii, p. 339.

⁵ It remained in force for eight years.

⁶ *Laws*, 1850-1, pp. 11-19.

⁷ *Ibid.*, pp. 27-38.

⁸ The assessed value of corporation stock increased from \$286,000, in 1850, to \$2,861,000, in 1851. The assessed value of other personal property rose from \$36,200,000, in 1850, to \$61,500,000, in 1851, an addition of 70 per cent. *Doc. Journ.*, 1850-1, Pt. i, p. 61, and 1851-2, Pt. i, p. 126.

valuation of lands and improvements.¹ In at least one case the county board of equalization had illegally reduced the aggregate valuation one-half. The Auditor of State was by the Legislature directed to address a circular to the auditors of such counties, ordering them to reinstate upon the tax duplicates the original valuations.²

Three Classes of Equalizing Boards. In 1852 provision was made for three classes of boards for equalizing the appraisalment of real property. The local board was composed of the auditor, the board of commissioners and the appraiser or appraisers of each county.³ They had power to equalize the appraisements of the several townships in the county and also the assessment of individuals within any township whenever they deemed the valuation unequal and inequitable. The auditors of the several counties in each congressional district⁴ constituted a district board, vested with power to equalize the valuation of lands between the counties within their respective districts. In no case did they have power to alter the assessments of individuals. The State Board of Equalization consisted of delegates selected, respectively, by the district boards from their own numbers and the Auditor of State, who was president of the board. It was their duty to equalize the appraisalment of lands between the several congressional districts. They had no authority to equalize the valuations between the counties. The county, district and State boards had no "power to reduce the aggregate valuation of the real property of the

¹ *Rept of Auditor, 1851, Doc. Journ., 1851-2, Pt. i, pp. 123-127.*

² *Local and Special Laws, 1851-2, p. 151.*

³ For the purpose of equalizing the value of *personal* property and of hearing and determining complaints of owners, the commissioners, the auditors and the assessors (one for each township), were constituted a county board of equalization. *Rev. Stat., 1852, i, p. 129.*

⁴ There were in 1852 eleven districts.

townships, counties, and districts as reported to them respectively;" but if the assessment in any instance was deemed to be too low, the aggregate might be increased.¹

While the operation of the law offered some encouragement, it could not be pronounced a decided success.² There was an increase in 1853 of \$47,500,000 (nearly 22 per cent.) in the total assessed valuation; but only about \$10,000,000 of this was in real estate values. The action of the State Board in altering the valuations of 1852 was overruled by the Supreme Court on two grounds: (1) the Board was not legally convened because of the absence of the delegate from one congressional district; and (2) it exceeded its powers by attempting to equalize the appraisements between the counties within a district.³ This decision disclosed two vital imperfections of the law. One of these was removed by an act of 1852, which went into effect the following year. It construed any "words importing joint authority of three or more persons * * * * as authority to a majority of such persons unless otherwise declared in the law."⁴ This prevented any dissatisfied member of the Board from nullifying its proceedings by willful absence. The other defect was remedied in 1859 by giving the State Board power to equalize the appraisalment of lands between the several counties and congressional districts of the State.⁵

In 1858 provision was made for a regular quinquennial

¹ *Rev. Stat.*, 1852, i, pp. 273-275.

² In 1852, the aggregate valuation of lands, including improvements, was increased by the action of county boards of equalization, \$737,501, with a considerable increase also in the valuation of townlots. The district boards increased the valuation in 14 counties by a total of \$1,770,232, and in 13 counties decreased the valuation \$2,067,792, diminishing the total by \$297,560. In four districts no changes were made. *Report of the State Board of Equalization*, 1852, *Doc. Journ.*, 1852-3, Pt. i, pp. 198, 199-204.

³ *Hamilton v. The State*, 3 *Ind. Rep'ts*, 452.

⁴ *Rev. Stat.*, 1852, ii, p. 339.

⁵ *Laws*, 1859, p. 145.

appraisement of real estate under the same system as that provided in 1852.¹ The result of the new appraisement in the next year more than justified the claims of the officers who urged it. The assessed valuation of real estate increased from \$185,000,000 in 1858, to \$302,400,000 in 1859, an increment of more than 63 per cent.

In order to secure greater equality in the assessment of personal property within the county, township assessors were in 1865 required to meet at the county auditor's office for the purpose of agreeing upon uniform rates of assessment. The assessors were then to be governed as far as practicable by the list of prices of personal property made out at that time.² But this measure did not prove to be effective.

Officials did not moderate their severe criticisms of the tax system. In 1866 the Auditor of State discussing the appraisement of real estate declared that the acts upon the statute books were crude in design, imperfect in detail, and totally inadequate in execution, to secure the end which should be the object of all laws relating to the subject of taxation.³ In 1872 he declared, emphatically, that it was palpable without further comment that the district boards of equalization had proved worse than failures. "Their history is a story of wrong, unjust and generally illegal action, and it is a lamentable truth that the success of the State Board as constituted at present has been but little better."⁴ Still the reports⁵ show that in 1864 and 1869 the State Board of Equalization added more than \$19,000,000 directly to the valuations as returned to it. Besides, it must not be forgotten

¹ *Laws, Spec. Sess.*, 1858, pp. 4-12.

² *Laws, Spec. Sess.*, 1865, p. 173. This clause was omitted in subsequent laws, but was re-enacted in 1899. *Laws*, p. 218.

³ *Rep't of Auditor*, 1866, *Doc. Journ.*, 1866-7, Pt. i Doc. 3, p. 26.

⁴ *Rep't of Auditor*, 1872, pp. 45-6. Cf. 34 *Ind. Rep'ts*, pp. 452-5.

⁵ *Rep'ts St. Bd. Equalization*, 1864 and 1869.

that even if the Board had added nothing to the total assessment, the alterations made by it distributed the burdens of taxation more equally and justly.¹ Furthermore, the very existence of the Board had a tendency to discourage unfair appraisements. On the other hand, it must be admitted that the composition of the State and district boards exposed them to the evils of local bias and favoritism.

Reorganization of the Boards of Equalization. A thorough revision of the tax system was made in 1872. All property was required to be listed at a "fair cash value." Former law had authorized the assessment of property upon this basis; but long administrative usage and interpretation had given sanction to a much lower valuation. Real property was to be assessed biennially.² The board of county commissioners, the auditor and assessor of each county were constituted a board of equalization of the assessment of both real and personal property with powers not only to hear complaints, but to act on their own motion. They had no authority to reduce the aggregate valuation of any township in any instance, nor to increase it, except so far as was necessary to equalize the assessment; but they did have power to set aside the entire assessment of a township or of the whole county, and to order a new one.³ The district boards were discontinued.

The State Board of Equalization was reorganized and made an *ex officio* body, consisting of the Governor, Lieutenant-Governor, Secretary, Auditor and Treasurer of State.⁴

¹ In 1864, an increase, ranging from 5 to 40 per cent., was made in 58 counties; 34 counties remained unchanged. In 1869, an increase, ranging from 5 to 60 per cent., was made in 42 counties and a reduction, from 3 to 30 per cent., in 12 counties.

² *Laws, Spec. Sess.*, 1872, pp. 59, 60, 88.

³ *Ibid.*, pp. 100, 124-5.

⁴ The Attorney-General was added to the Board in 1881. *Rev. Stat.*, 1881, sect. 6402.

It was their duty biennially to equalize the assessments of the real property of the State and annually to assess originally the capital stock of every company or association incorporated under the laws of the State and also the "railroad track," "rolling stock" and capital stock of railroads.¹ The board could not reduce the aggregate assessed valuation in the State; neither could it increase such valuation, except to such an amount (not exceeding one per cent.) as might be reasonably necessary to a just equalization. But this limitation did not apply to the property of railroad companies.² At the first session of the reorganized Board of Equalization (in 1873) they increased the assessment of real estate in 25 counties from 5 to 50 per cent., and reduced the same in 13 counties from 5 to 20 per cent. The increase in the total assessed valuation of all property in 1873 exceeded \$280,000,000—an increase of more than 42 per cent.³

There had been instances in which the county auditors had disregarded the changes which the State Board of Equalization had ordered to be made.⁴ Governor Baker had realized the futility of relying upon the local courts for the enforcement of the orders of the State Board. He had, therefore, recommended that whenever the interests of the State were injuriously affected by the official negligence or

¹ See page 287 ff, below.

² *Laws, Spec. Sess.*, 1872, pp. 126-7 (sects. 284-290).

³ Assessments of 1872 and 1873 compared:

	1872.	1873.	Per cent. of Increase.
Value of personal property, not including corporation property...	\$205,800,000	\$247,100,000	20
Value of real estate.....	442,000,000	654,500,000	48
Value of all property.....	653,400,000	933,500,000	42

Rep'ts of Aud., 1872, pp. 138-9; 1873, App. 20-3; 1892, p. 60.

⁴ *Rep'ts of Aud.*, 1869, pp. 47-9; 1871, pp. 20-1. *Message of Governor Baker*, 1871, *Doc. Journ.*, 1870-1, ii, pp. 26-9.

official misconduct of a county officer, he should be made liable to an action in some court at the capital of the State. This suggestion in a modified form was embodied in the revised tax law of 1872.¹ The Auditor of State was required, whenever he should learn "that any county, township, city or town, or any well-defined locality thereof, or any particular class of property therein" had been, or might be, released from its just and lawful proportion of State taxes, to commence suit in any county of the State, either against the municipality or against the property unjustly released from taxation or the owners thereof.² In case a judgment should be recovered, the Auditor of State was required to levy a rate on the equalized valuation of all property or the particular class of property in such municipality as would pay the State the amount of the judgment and costs. It was made the duty of the county auditor to extend such rates of tax with the State tax of the year directed in the Auditor's certificate. If any county auditor neglected or refused to extend such rate, he was to be removed from his office and was, besides, subject to a fine of \$5,000 and damages, to be sued for by the Auditor of State in any county. If the Auditor and proper local authorities could make satisfactory arrangements without a suit, such a course was authorized.³ No further complaint on this score has been found by the writer.

The enhanced values obtained by the assessment of real estate biennially, did not justify the labor and expense which it involved. A quinquennial assessment was, therefore, authorized in 1875⁴; and in 1881⁵ the period during which an assessment was to continue as the basis of taxation was

¹ It was omitted from the *Revised Statutes* of 1881.

² In 1875 this was changed to "any court in the State." *Laws*, 1875, p. 41.

³ *Laws, Spec. Sess.*, 1872, p. 122 (sect. 269).

⁴ *Laws, Reg. Sess.*, 1875, p. 142.

⁵ *Rev. Stat.*, 1881, sect. 6388.

extended to six years. In 1891¹ it was shortened to four years at which figure it now remains.

In 1877 the State Board of Equalization was relieved of the duty of assessing the capital stock of all corporations except transportation companies.²

In the hope of giving local boards of equalization a more representative character their composition was changed in 1881. The county commissioners and four free-holders, selected from different parts of the county by the Judge of the Circuit Court, were constituted the board of equalization.³ For the purpose of properly listing and assessing property and equalizing and collecting taxes, county auditors, the Auditor of State and all boards of equalization were given the right to inspect and examine the records of all public offices and the books and papers of all corporations and other tax-payers without charge.⁴

For several years it had been the duty of the Auditor of State to furnish county auditors and other officers suitable forms and instructions. He was further authorized in 1881 to order and enforce a correct and, as far as practicable, a uniform system of book-keeping by county treasurers and auditors so as to afford a suitable check upon their mutual action, and to insure the thorough supervision and safety of State, county and other funds.⁵ There were obstacles in the way of the prompt enforcement of this law. Many counties were using under contract various patent systems, to be furnished for a term of years. The efforts of the Auditor of State to supplant these systems were ignored or resisted, especially as there were no legal means of enforcing the system of book-keeping which he might prescribe. The Auditor

¹ *Laws*, 1891, pp. 239-40.

² *Laws, Reg. Sess.*, 1877, p. 141.

³ *Laws, Reg. Sess.*, 1881, p. 656.

⁴ *Ibid.*, p. 619.

⁵ *Laws, Spec. Sess.*, 1881, pp. 690-691.

of State did, however, insist upon a uniform method of settlement with the county treasurers so far as the State's revenues were concerned.¹

With all of its amendments the assessment law still contained some contradictory sections and lacked some material provisions. There was need of more definite power on the part of the Auditor of State to enforce and compel the adoption of his opinions and instructions by the local tax officers. The legal period for the session of the State Board of Equalization was too short in the years in which the assessment of real estate was made. Besides, they had no means of obtaining information in regard to the value of lands, other than that furnished by the abstracts. There was no power to send for persons or papers and no funds were set apart to meet the expenses of a judicious investigation. The Auditor of State actually thought it would be a great deal better to re-establish the district boards of equalization than to continue the existing methods.²

One great obstacle to the realization of uniformity and equality in taxation was the great variety of interpretations which township assessors and county boards of review put upon the meaning of a "fair" cash value. This permitted a large proportion of personal property to escape taxation, throwing a greater burden upon real estate. To eliminate, as far as possible, this variable element in the assessment of all property, the tax reform law of 1891 established as the basis of valuation the "true cash value" or the price which could be obtained at a voluntary private sale.³

In order to give greater unity to the local administration, the elective office of county assessor was revived in 1891. It is made his duty to examine carefully the tax duplicate and all other records and papers in the offices of county officials,

¹ *Rep't of Aud.*, 1882, p. 69.

² *Ibid.*, 1886, pp. 5, 6.

³ *Laws*, 1891, pp. 213 and 236, sect. 53 and 95.

and to list and assess at its cash value upon the books of the proper township assessor all omitted assessable property of every kind. It is also his duty to advise and instruct the township assessors of his county as to their duties and for this purpose to visit each during the month of April or May in each year.¹ He also holds annual conferences with these officers for the purpose of agreeing upon uniform rates for the assessment of all kinds of personal property. In determining such rates the assessors are influenced, though not controlled, by the deliberations of the State conference of county assessors.²

The local board of review was again made an *ex officio* body, composed of the assessor, auditor and treasurer of each county. Its powers of examination and investigation were enlarged by giving it authority to send for persons and papers and to compel witnesses to answer under oath, touching any question concerning the assessment or valuation of property.³ Four years later, in accordance with a recommendation of the State Board of Equalization, two free-holders, appointed by the judge of the circuit court, were added to the board.⁴

The State Board of Tax Commissioners. Important changes were also made in 1891 in the organization and powers of the central authority charged with the equalization of the tax assessments. The adoption of the name "State Board of Tax Commissioners," signifies of itself that its function was something other than that of equalizing valuations. The Board since then has been composed of the Governor, the Secretary of State, the Auditor of State, and "two skilled and competent persons" appointed by the Governor for a term of four years. There is a benefit to be

¹ *Laws*, 1891, pp. 243-5.

² See page 276, below.

³ *Laws*, 1891, pp. 245-248.

⁴ *Laws*, 1895, p. 75.

gained from the non-official element in the Board. A body made up entirely of *ex-officio* members with other duties to discharge would not have had the time to devote to the performance of the business of the Board with its greatly enlarged powers. Besides, these members appointed upon the sole responsibility of the Governor, have no pre-election promises to fulfill.

The general supervisory and administrative duties of the Board are the following: To prescribe all forms of books and blanks used in the assessment and collection of taxes; to construe the tax and revenue laws of the State and instruct officers in relation to their duties with reference to taxation and assessments, whenever requested to do so by any officer acting under any such laws; to see that all assessments of property are made according to law; especially to see that all the railroad and other corporations of the State are assessed and taxed as provided by law; to see that all taxes due the State are collected; to enforce penalties prescribed by any revenue law of the State for disobedience of its provisions; to determine, whenever necessary, the amount required to be levied upon property in the several counties to cover any deficiency in the State revenue, not otherwise provided for; to make such rules and regulations as the Board shall deem proper to effectually carry out the purposes for which it is constituted; to report to the General Assembly at each session the whole amount of revenue collected in the State for all purposes (classifying as to State, county, township, and municipal purposes, with the sources thereof) the amount lost and the causes of the loss, the proceedings of the Board, and such other matters of information concerning the public revenues as they may deem of public interest; to make investigation and inquiry concerning the revenue laws and systems of other States and countries; to recommend to the General Assembly such amend-

ments of the revenue laws as seem proper or necessary to remedy injustice or irregularity in taxation, or to facilitate the assessment and collection of public revenues; to see that each county in the State is visited by at least one member of the Board as often as once each year in order to hear complaints concerning the law, to collect information concerning its workings, to ascertain that all revenue officers comply with the law, and that all violations thereof are punished, and to listen to all proper suggestions as to amendments to it. These duties are to be performed, as far as possible, by the two members specially appointed. The Governor, Auditor and Secretary of State are required only to take part in the proceedings of the Board when it performs the duties which formerly devolved upon the State Board of Equalization, and at other times when it may be necessary in order to effectually carry out the purposes of the law.¹ The Board still retains the power to assess the property of railroads² and to equalize the assessment of real estate; and the legal means of enforcing such authority are greatly amplified. They are not to be bound by any reports or estimates of railroad, real estate or other property as returned to the county auditors or to the Auditor of State, or certified in connection with appeals or applications for revision, but are to appraise and assess all property coming before them for assessment, directly or indirectly, at its true cash value according to their best knowledge and judgment. They have power to send for persons, books and papers; to examine records, and to hear and question witnesses. They were also vested with authority to punish by fine or imprisonment or both any one who refused to appear and answer questions. The right of appeal in such cases lay to the Criminal Court of Marion County. The sheriffs of the several counties were required to serve all process and exe-

¹ *Laws*, 1891, pp. 249-252.

² See below, sect. 3, ii.

cute all orders of the Board.¹ That part of the law giving the Board power to punish persons for contempt was declared invalid by the Supreme Court.² In equalizing the valuation of property in the different counties, they are to consider separately railroad property, lands and town and city lots; and to make their additions to, or deductions from, the assessed valuation of each class.³ The State Board has no jurisdiction over individual assessments except in cases of appeal from the county boards of review or in the assessment of "railroad property."⁴

The decisions of the State Board are final. The courts have no power to alter assessments fixed by boards of equalization legally organized, where no fraud but only a mistake is charged.⁵

The practical operation of the law disclosed some defects, which were in part corrected in 1895. The absence of the right of appeal by the local taxing officers made it possible for a partial board of review to assess a local corporation at a low figure and thus enable it to escape its fair share of the tax burden.⁶ To prevent this, any township or county assessor, or any member of the county board of review, or any tax-payer of the county is given the right, upon serving the required notice, to appeal to the State Board of Tax Commissioners from any original assessment made by the county board of review, and from any of its orders increasing or decreasing any assessment, or refusing to increase the same or to assess hidden or omitted property.⁷ Thus, the

¹ *Laws*, 1891, p. 252.

² *Langenberg v. Decker*, 131 *Ind. Rep'ts*, 471.

³ *Laws*, 1891, p. 255.

⁴ *Ibid.*, p. 252, and *Jones v. Rushville Nat'l Bk.*, 138 *Ind. Rep'ts*, 87.

⁵ *Rhoads v. Cushman*, 45 *Ind. Rep'ts*, p. 85.

⁶ *Rep't State Board Tax Commissioners*, 1895, p. 8.

⁷ *Laws*, 1895, pp. 79, 80.

representative of the State has the same right of appeal as the private individual.

In order to secure greater uniformity in the assessment of personal property and to impart a more thorough knowledge of the subject of taxation and of the duties of officers under the laws, the State Board has annually since 1894 called the county assessors together in a general conference. These meetings have resulted in much good.¹ In 1901, in accordance with the recommendations of the State Board,² it was by law made the duty of that body to call such annual conferences. While the attendance of assessors is not compulsory, the counties are required to compensate all those who do attend, for their expenses within a maximum fixed by the law.³

After one year's experience under the law of 1891, the Auditor of State pronounced it "the most equitable and soundest tax measure Indiana has ever known."⁴ The State Board of Tax Commissioners in 1895⁵ said: "The financial standing of the State has materially improved since it went into effect." The chief source of gratification was the great increase in the assessed valuation of corporate property. The relatively small percentage of growth in the value of personal property disclosed the weakest point in

¹ *Rep't of Aud.*, 1900, p. 12.

² *Rep'ts St. Bd. Tax Commissioners*, 1895, pp. 7, 8; 1897, pp. 5, 6.

³ *Laws*, 1901, pp. 172-3.

⁴ *Rep't of Aud.*, 1892, p. 5. The basis for this satisfactory opinion was found in the following figures:

	1890.	1891.	Per cent. of Increase.
Assessed value of real estate.....	\$553,937,744	\$898,600,323	44
Assessed value of railroad property....	66,206,295	161,039,169	143
Assessed value of telegraphs, etc.....	698,672	1,871,012	168
Assessed value of personal property....	236,831,676	293,745,534	24
Total assessed value	\$857,674,387	\$1,255,256,638	46

⁵ *Rep't of St. Bd. of Tax Commissioners*, 1895, p. 4.

the law. Comparing the assessed values of real estate and personal property in 1891 with their true valuation as given in the United States Census of 1890, it is seen that the assessed value of real estate is 69.7 per cent. of its true value, while the assessed value of personal property is only 36.4 per cent. of its true value.¹ The Auditor of State in a recent paper lamented the fact that "the public treasury is defrauded, levies are higher, and perjury made semi-respectable because of this wholesale dodging and sequestration" of personal property—especially in the form of mortgages.² In the hope that a central control over the assessment of personal property would prove as effective as it has been in the case of real estate, the power was granted in 1901 to the State Board of Tax Commissioners to equalize the valuations of personal property.³ No data from which the merits of the law may be judged are yet available. But it may be safely predicted that even this centralization of authority will not correct the evils which are inseparable from the general property tax.

3. THE TAXATION OF CORPORATIONS

I. *The Evolution of a Centralized Administration.* In the first years of statehood there were very few private corporations. The banks held the most important rank. Almost from the beginning it was recognized that a special form of taxation was needed to reach the tax-paying ability of these institutions. As early as 1820, a State tax of twenty-five cents was imposed upon each \$100 share of paid-up bank stock. Such property was to be listed in the name of the

¹ United States Census 1890; *Wealth, Debt and Taxation*, Pt. ii, p. 16. Compare *Rep't of Aud.*, 1900, p. 12.

² Read before the Conference of the State Board of Tax Commissioners and the County Assessors. See *Indianapolis News*, Feb. 7, 1902, p. 10.

³ *Laws*, 1901, pp. 45-6.

cashiers of the respective banks, and the tax was to be paid by the corporation to the local tax collectors.¹ Practically no revenue was derived from this source.²

The fifteenth section of the law chartering the State Bank of Indiana imposed an annual tax of twelve and one-half cents on each share of paid-up stock held by private individuals in lieu of all other taxes and assessments.³ This act was passed at the time when the adoption of the *ad valorem* system of taxation was being seriously discussed. Therefore, it was stipulated that, in case this change should be made, such stock should be "subject to the same ratio of taxation as other capital not exceeding one per cent.," including the twelve and one-half cents on each share.⁴ The anticipated step was taken in the following year. There was opposition on the part of the stockholders to the payment of the tax, which led to collisions between the bank officers and the State and county authorities. To remedy this, the collection was placed entirely in the hands of State officers. The Board of directors of each branch was required to transmit annually to the Auditor of State a certification of the amount of stock owned and paid for by each individual stockholder, whether resident or not. The Auditor, thereupon, drew on such branch in favor of the Treasurer of State for the amount of the State taxes fixed by law. This was in lieu of all county and road taxes. It was the duty of the cashiers of the respective branches to deduct from the

¹ *Laws*, 1819-20, pp. 150 ff. The same provision was contained in the *Revised Statutes* of 1824 (p. 339) and 1831 (p. 427).

² At that time there were only two banks in the State. One of these was closed by the courts within the next two years and the other soon afterwards withdrew from business. No other bank was incorporated until 1834.

³ This was deducted from the dividends and allowed to accumulate in the bank until 1843-5. It constituted a part of the permanent school fund. See page 59 above.

⁴ *Laws*, 1833-4, pp. 15, 16.

dividends of each stockholder the sum sufficient to pay his tax.¹ This law was re-enacted in 1843 and 1852 with no important changes, except that the clause exempting the bank from local taxation was omitted.²

After the authorization of "free banks," having permission to issue notes upon bonds or stocks deposited with the Treasurer of State, he was directed to retain so much of the interest which might accrue upon the securities as might be sufficient to pay the taxes of any such bank and to remit the amount to the treasurer of the county in which the bank was located.³

The laws of 1835 and 1836, establishing the new system of taxation, were not explicit in regard to the method of assessing corporations. The purpose seems to have been to tax every corporation as a unit upon its tangible property as returned by the president or some other responsible officer of the institution. The stockholders were required to list their stocks along with their other taxable property, but were allowed a deduction for the value of that part of the "stock * * * converted into property" upon which the corporation as a whole paid taxes.⁴

State officers were not slow to see that the methods used in the assessment of other personal property were inappropriate in determining the valuation of corporate property. Governor Wallace in 1839 referring to the "grossest negligence" displayed in the assessment of corporation stock, declared that the private stock in the State Bank of Indiana alone amounted to \$1,334,050, between four and five hundred thousand dollars more than the whole amount of cor-

¹ *Laws*, 1840-1, pp. 46-7.

² *Rev. Stat.*, 1843, p. 232-3; 1852, i, pp. 144-5.

³ *Laws*, 1855, p. 17.

⁴ *Ibid.*, 1834-5, ch. ix, sects. 1, 2, 12; 1835-6, ch. vii, sects. 1, 2, 11, 26.

poration stock returned.¹ Besides, there were the stocks of the savings institutions, the loan offices and insurance companies.²

The Revised Statutes of 1843 prescribed more fully the method of arriving at the value of corporate property. A statement was required from each company, specifying the amount of real estate owned, the amount of capital stock actually paid in, the amount of capital stock owned by the State and by any charitable or literary corporation, and the location of the principal office.³ The cash value of the stock was to be ascertained from the sales of stock or in any other manner; deductions were to be made for the value of real estate owned by the company and the amount of stock, if any, belonging to the State or to any incorporated literary or charitable institution. The value thus ascertained, together with the value of the corporate real estate, constituted the amount on which the tax of such a company was assessed. The taxes were paid out of the funds of the company and ratably deducted from the dividends of those stockholders whose stock was taxed, or charged upon the stock, if no dividend was declared.⁴ Abstracts showing all these facts were to be transmitted by the county auditor to the Auditor of State. The law did not prevent evasion and undervaluation.

Transportation Companies. The amount of corporation stock returned for assessment gradually diminished.⁵ There

¹ The amount of corporation stock returned was \$869,630.

² *Message, House Journ.*, 1839-40, p. 15.

³ The personal property of each corporation was to be assessed in the township where the principal office was located, or, in case no principal office was maintained, in the township where the operations of the company were carried on. *Rev. Stat.*, 1843, p. 210.

⁴ *Rev. Stat.*, 1843, pp. 229-31. Private stock in the State Bank was still taxed as in 1841. See pages 278-9 above.

⁵ The valuation of corporation stock, not including the bank stock, had declined

was complaint also, because the valuations of transportation companies which were returned, were unequally distributed among the counties through which the roads ran. These conditions plainly demonstrated the uncertainty and inefficiency of the mode of assessing such property by means of local officers. In 1851¹ an experiment was tried, which was a crude attempt to centralize the assessment of each transportation company in the hands of a single county auditor in place of leaving that responsibility to the officers of the several counties within which it was situated.

Every domestic corporation, except transportation companies and the State Bank, was assessed as a unit after the method prescribed in 1843.² In the case of domestic transportation companies³ the resident stockholders returned to the assessors of the counties in which they resided the amount and value of their stocks and bonds for which they were assessed individually. In order to reach the non-resident stockholders of such corporations, each company was required to submit to the auditor of the county in which its principal office was situated a list of the stock owned by non-residents, with its value. It was the duty of the auditor to enter the name of the company upon the tax duplicate with the amount and value of the stock owned by non-residents and to assess the taxes upon it. These rates were to be paid by the company to the county treasurer, who remitted the State taxes to the State treasury and divided that portion intended for local purposes among the counties in proportion to the mileage.

from \$301,298, in 1842, to \$122,364, in 1849. One railroad alone had individual stock amounting to four or five hundred thousand dollars, yielding large dividends, upon which, according to the Auditor of State, not a cent of taxes had ever been assessed or collected. *Rept of Auditor, 1847, Doc. Journ., 1847-8, Pt. i, pp. 89-90.*

¹ *Laws, 1851, pp. 33-4.*

² See page 280 above.

³ Railroad, plank road, turnpike, canal or bridge companies.

It seems to have been the intention of the law to assess railroads incorporated in other States (practically the only foreign transportation companies at that time) upon their tangible property situated in Indiana. The act declared that, if any railroad company should not have its principal office in this State, the president or some other responsible official should furnish to the auditor of the county where the road first entered the State, a schedule of the amount and value of all real estate owned by the company in the State, the cost of construction of the road lying within the State, and the amount invested in machinery and rolling stock. The machinery and rolling stock were to be assessed by the auditor in the proportion which the length of the road in Indiana bore to the length of the completed line. The taxes were apportioned as in the case of stock owned by non-residents. The real estate of such companies seems to have been assessed as other real estate. For the first time in Indiana it was recognized, though in an ill-defined way, that a railroad is a unit, and that the value of any particular portion of it can be determined only by considering it as a related part of the unified system. In spite of its imperfections and obscurities¹ the assessed value of corporation stock rose from \$286,516 in 1850, to \$2,861,855 in 1851, and to \$6,000,000 in 1852.

The law was revised in 1852² so as to require every transportation company to furnish the proper auditor³ a list of all of its stock, with a statement dividing the aggregate amount among the several counties in proportion to the value of the superstructure, buildings and real estate of such company in each county. The entire tax was paid by the

¹ The law is almost unintelligible, but the interpretation given here seems to be the reasonable one.

² *Rev. Stat.*, 1852, i, pp. 113-4.

³ See pages 281, 282, above.

corporation and apportioned on this basis. The machinery and rolling stock were assessed as in 1851. The appraisal of corporation property in 1853 amounted to \$14,000,000, an increase of more than 167 per cent. These laws failed to reach the value of the railroad properties which was represented by bonds and mortgages; and on the other hand, it subjected a part of the property situated in other States to taxation in Indiana.

The Auditor of State, believing that many of the returns made by the railroads in 1853 were imperfect, urged the auditors of those counties where the principal offices were situated, to make out from the best information obtainable fair and true statements of the value of their taxable property, and place the amounts on the tax duplicates. A majority of the auditors promptly investigated the matter and put additional assessments upon their duplicates; but others refused to respond to the request.¹ In view of these omissions and the disregard of his appeal, the Auditor recommended that the railroad companies be compelled to report directly to him instead of the county auditors, and asked that full power be given him to investigate the truth of such returns if, in his opinion, the interests of the State should demand it.² No immediate action in this direction was taken.

In 1858 it was provided that real estate which was owned by transportation companies but which was not used in the operation of the road should be deducted from the aggregate value of the stock, and the portion situated in Indiana should be assessed locally in the same way as lands owned by private persons. The value of the stock remaining after subtracting the value of such real estate was to be divided

¹ *Rep't of Aud.*, 1854, pp. 99, 100. The total additional assessment resulting from this investigation was \$2,852,564.

² *Ibid.*, p. 125.

among the separate counties in proportion to the value of the superstructure, buildings and real estate owned by the company and used in its operation in each county. The rolling stock and machinery were assessed in the same proportion that the length of the lines in this State, completed, bore to the entire length of lines.¹ These changes, though they relieved from taxation the real property of interstate roads which was situated outside of the State, did not increase the efficiency of the system because its administration was still left in the hands of local officers.

The growing dissatisfaction with the system of assessing railroad property impelled the legislators to try another experiment in 1859. Statements and schedules were required to be made to the several appraisers of the counties through which any railroad ran. These officers were to meet at a point on the line of the road designated by the Auditor of State, and then appraise the entire value of the road per mile through their respective counties, taking into consideration the location of the road, the competition of other roads, the earnings above current expenses and repairs and its condition for present and future business.² This law proved impracticable because in many counties there were several lines and the appraisers could not meet others of different lines on the same day. They were all called together at Indianapolis and adjourned to meet upon each of the roads on different days. As all the appraisers did not attend these meetings there arose a question as to the validity of the assessments. In consequence the Auditor of State consented to the re-appraisement under the provisions of the law of 1852.

The State Board of Equalization had occasion in 1859 to decide what was the extent of its authority over the assess-

¹ *Laws, Spec. Sess.*, 1858, pp. 25-6.

² *Laws*, 1859, p. 5.

ments of railroads. They concluded after due consideration, that they had no power to equalize such appraisements. They recommended, however, that the Legislature take action to remedy the great inequalities existing.¹

The appraised value of railroad property² declined so rapidly that some further legislation was deemed imperative. In 1865 the law was amended so as to require a more complete schedule of the property of every road, and a statement of the gross earnings and the average net earnings above the current expenses and repairs during the five years immediately preceding. The time of the meeting of the appraisers was changed to any date within a specified period. These officers were to "appraise the value of said road per mile by making a valuation of the railroad, and all its fixed property, situate within this State and such proportion of the rolling stock and movable property used in operating the whole road as the length of the railway in this State bears to the entire length thereof." Real estate not used in its operation was to be assessed locally. The appraisers apportioned the assessment among the counties according to the mileage. A heavier penalty was imposed upon railway officials for failure or refusal to comply with the act. The State Board was, strangely enough, granted power to hear appeals made by the railroads and to give them relief;³ but the State had no right of appeal. The assessments made under the previous laws were legalized. The law was still exceedingly deficient. The State Board of

¹ *Rep't St. Board Equalization, 1859, Doc. Journ., 1859, Pt. i, p. 242.*

² Appraised value of railroad property:

<i>Year.</i>	<i>Appraisalment.</i>	<i>Year.</i>	<i>Appraisalment.</i>
1857.....	\$15.7 mil.	1861.....	\$1.9 mil.
1858.....	10.0 "	1862.....	} not given in the reports.
1859.....	9.7 "	1863.....	
1860.....	6.6 "	1864.....	8.6 mil.

³ *Laws, Spec. Sess., 1865, pp. 121-3.*

Equalization, in an address to the Legislature in 1869 setting forth the defects of the assessment system, asserted that the railroad property of the State had cost not less than \$80,000,000, yet it was returned for taxable purposes at less than \$10,000,000.¹ The Board of Equalization had no power to increase any appraisement under the law of 1865. Moreover, no one was authorized to report the appraisements of railroads to either the Auditor or the State Board of Equalization.²

From all this experimentation we may infer that there was a determination to exhaust every possible means before adopting the rational method of assessment by central authorities. But the facts were stubborn; and they finally convinced the most skeptical of the necessity of State control over this subject.

In the thorough revision of the tax laws in 1872,³ the corporations were not neglected and their assessment was closely centralized. All domestic corporations were to list their tangible property just as individuals. In addition, they were required to deliver annually to the county assessor a sworn statement, setting forth: (1) the name and location of the company; (2) the amount of capital stock authorized and the number of shares; (3) the amount of capital stock paid up; (4) the market value, or if no market value, then the actual value of the shares of stock; (5) the total amount of indebtedness, except that for current expenses, excluding the amount paid for the purchase or improvement of property; (6) the assessed valuation of all its tangible property. These statements were to be scheduled by the assessor and returned to the county auditor. He in turn forwarded them

¹ The assessment in 1872, with a trackage of 3,649 miles, was \$150,000 less than it was in 1854, with only 1,317 miles.

² *Rep't St. Bd. Equalization, 1869, in Rep't of Auditor, 1869, pp. 47-9.*

³ *Laws, Spec. Sess., 1872, pp. 59, 60, 76-7, 128.*

to the State Auditor, who laid them before the State Board of Equalization. The State Board assessed the value of all such corporations; and the amounts were certified by the Auditor of State to the auditors of the respective counties. The Board had power to adopt such rules and principles for ascertaining "the fair cash value of such capital stock," including the franchise, as seemed equitable and just to it.¹ The process of arriving at these valuations was to deduct the assessed value of the company's tangible property, as returned by the county assessor, from the value of the stock given by the company in their sworn statement. In case the tangible property of the company equaled or exceeded the true value of the capital stock, there was no assessment made by the State Board; in case it was less, the company was assessed for the difference.² This law did not apply to foreign corporations which, in consequence, escaped taxation. The shares of capital stock in any State or national bank were to be assessed and to be taxed at the place where the bank was located at the same rate as other taxable personal property.³

The most important provisions of the law of 1872 were those regulating the assessment of railroads. These were modeled after the laws of Illinois. The tangible property of railroads was classified in four categories: "railroad track;" real estate not included in "railroad track;" "rolling stock;" and personal property not included in "rolling stock." Every railroad company was directed to return to the Auditor of State schedules of the property denominated "railroad track" and "rolling stock;" a description of the

¹ *Laws, Spec. Sess.*, 1872, pp. 59, 60. See page 268 above.

² *Rep't Aud.*, 1873, pp. 26-7.

³ *Laws, Spec. Sess.*, 1872, pp. 77-8. This was a repetition of the law of 1867, excepting the clause of the latter which exempted the State Bank and National Banks from municipal taxation. *Laws, Reg. Sess.*, 1867, pp. 216-8.

character and construction of the railroad bed, track and superstructures; and a statement concerning the capital stock such as was required for other corporations.¹ In addition, each company had to file with the auditors of the counties in which the road was located, a statement showing: the property held for right of way; the length of the main and all other tracks and turnouts in each county and in each city or town in the county; and the area of each tract of land, with the value of improvements and stations located on the right of way. The right of way, including the superstructures, stations and improvements on it, was held to be real estate for the purpose of taxation and denominated "railroad track." This property was assessed by the State Board of Equalization. Its value was distributed among the several counties, townships, cities or towns in the proportion that the length of the main track in each municipality bore to the whole length of the road in the State; except the value of side tracks, station houses, depots, machine shops and other buildings of the road, which, although assessed by the State Board, were to be taxed in the municipality in which they were located.² The real estate, including the stations and other buildings and structures thereon,³ other than that denominated "railroad track," was to be listed and assessed locally as other lands or lots by the county assessor. The movable property of railroads was held to be personal property and denominated, for the purpose of taxation, "rolling stock." Schedules containing detailed inventories of all such property and showing the number of miles on which the "rolling stock" was used in Indiana and elsewhere, were to be returned annually. The "rolling stock" was also assessed by the State Board of Equalization and

¹ See page 286 above. *Laws, Spec. Sess.*, 1872, p. 81.

² *Laws, Spec. Sess.*, 1872, pp. 79, 80, 128.

³ *Ibid.*, p. 80. On this point the law was ambiguous.

apportioned among the taxing districts according to the ratio which the mileage in each bore to the whole length of the main track, both within Indiana and without the State. The tools and materials for repairs and all other personal property except "rolling stock" were listed and assessed like the personal property of individuals. In addition, it was the duty of the State Board to assess the capital stock of railroad companies. The aggregate amounts of the assessments were to be distributed among the several counties in the same manner as the "railroad track."¹ This provision was intended to reach the State's share of that intangible value represented by the difference between the total value of the railroad and the total value of its tangible property.²

The law in regard to the taxation of telegraph companies was much simpler. They were required to submit annually to the Auditor of State schedules, such as other corporations furnished, and, in addition, a statement as to the length of line operated in each county and in the entire State. Their office furniture and other personal property were listed and assessed where they were situated. The capital stock was assessed by the State Board and apportioned in the same way as "railroad track."³

As a result of this law many thousand dollars' worth of corporation property were placed upon the duplicates of 1873, which had before that time escaped taxation entirely.⁴ The increase in the amount of the assessment of railroads was especially gratifying: this was in excess of 243 per cent

¹ *Laws, Spec. Sess.*, 1872, pp. 80, 128.

² The method of determining that value was the same as that used in the assessment of domestic corporations. See page 287 above.

³ *Laws, Spec. Sess.*, 1872, pp. 82, 83, 128.

⁴ The assessment of railroads increased from \$11,448,050, in 1872, to \$39,279,752, in 1873. About \$4,000,000 of intangible property of other corporations were also added to the assessment list.

It was found desirable a few years later to retrace one of these steps towards centralization. The State Board of Equalization had difficulty in getting returns upon which it could base the assessment of the capital stock of local corporations. It was evident that the county boards of equalization could more readily obtain the necessary information. These bodies were, therefore, empowered in 1877 to assess the capital stock of all corporations except railroads, express companies and other transportation companies.¹

In 1873 there was a still further differentiation of the corporation tax. The administration of the new taxes was completely centralized. It was made incumbent upon every foreign insurance company to report semi-annually to the Auditor of State the gross amount of all receipts obtained in Indiana on account of insurance premiums for the preceding half year, and at the same time to pay into the treasury of the State \$3 on every \$100 of receipts less the amount actually paid for losses within the State.² In case of a refusal to comply with the law, the Auditor had power to revoke the authority of the company to do business. By the same act all foreign and domestic express and sleeping-car companies were required, under a heavy penalty, to make similar reports and at the same time to pay to the State three per cent. of the gross receipts from passage fare and one per cent. of freight receipts. When only a part of such receipts was derived from passage fare or freight charges within the State, a return was required of that proportion of such receipts as the distance traversed in this State bore to the whole distance paid for.³ The validity of that part of the law affecting express companies and sleep-

¹ *Laws, Reg. Sess.*, 1877, p. 141.

² *Laws, Reg. Sess.*, 1873, p. 208. An experiment of this kind had been tried from 1849 to 1852. *Laws*, 1848-9, pp. 229-231. See also page 64 above.

³ *Laws, Reg. Sess.*, 1873, p. 207.

ing-car companies was denied. So generally was the existence of the law ignored that only one of the many corporations complied with its requirements.¹

The use of gross receipts derived from business within the State as the basis of taxation was extended in 1881 to foreign telegraph and telephone companies.² Foreign sleeping-car companies³ paid a tax of two per cent. of that part of the gross receipts which bore the same proportion to the total receipts that the distance traversed in the State bore to the whole distance paid for.⁴

In general, these companies refused to pay the taxes imposed, alleging the unconstitutionality of the act.⁵ The law taxing sleeping-car companies was soon tested in the courts. In 1883 it was declared unconstitutional by the Circuit Court of the United States for the District of Indiana on the ground that the law imposed a burden upon interstate commerce.⁶ Later the Attorney-General with the conviction that the statute properly construed imposed only an excise tax, commenced suit against another sleeping-car company. When the case reached the Supreme Court of the State, it was again decided, in 1887, adversely to the State.⁷

These decisions forced the State to shift its position to other ground. The carriage of money packages, articles *et cetera*, the transmission of messages by telegraph and by telephone, and the carriage of persons in palace cars and sleeping-cars, when conducted for profit, were declared to be privileges, for which such companies should pay the State

¹ *Rep't of Aud.*, 1875, pp. 89, 90.

² *Rev. Stat.*, 1881, sects. 6353-4.

³ Domestic express and sleeping-car companies were no longer subject to the tax. *Ibid.*, sect. 6352.

⁴ *Ibid.*, sect. 6355.

⁵ *Rep't of Aud.*, 1882, p. 68.

⁶ *State ex rel. Wolf v. The Pullman Palace Car Company*, 16 *Fed. Reporter*, 193.

⁷ *State v. Woodruff Sleeping and Parlor Coach Company*, 114 *Ind. Rep'ts*, 155.

annually a certain per centum of the gross receipts accruing from business originating and terminating in the State.¹

In spite of amendments made in 1881 the law regulating the taxation of railroads remained ambiguous as to the assessment of buildings or improvements located on the "right of way."² When the local authorities attempted to tax these improvements, payment was resisted on the plea that all such buildings were included in the valuation by the State Board, when, in fact, the State Board had no official knowledge of their existence or location. The Auditor of State in 1882 changed the form of reports so as to require this information, and property formerly untaxed to the amount of \$1,073,781 was added to the tax duplicates.³

The limited time allowed for the sessions of the State Board of Equalization was not sufficient to enable them to give the assessment of railroads the attention it demanded. The Auditor recommended in 1890 the appointment of one or more agents, who should gather the facts and information necessary to give the State Board a more thorough and comprehensive knowledge of the affairs and tax-paying ability of railroads.⁴ In the following year Governor Hovey strongly urged the enactment of a law providing for the establishment of a board of railroad commissioners for the State, who should have the general supervision of all railroads operated in the State, with power to inquire into all questions of neglect or violations of the law by these companies, and to make all necessary investigations to ascertain the amount of business done by such roads and their value for taxation.⁵ The bills of this nature which were introduced,⁶ were not passed. However, a step almost as centralizing in

¹ *Laws*, 1889, pp. 272-3, 389-90, 397-9.

² See page 288 above.

³ *Rep't of Aud.*, 1882, pp. 66-7.

⁴ *Ibid.*, 1890, p. 8.

⁵ *House Journ.*, 1891, p. 28.

⁶ *Ibid.*, p. 262; *Sen. Journ.*, 1891, p. 428.

its tendency was taken. The State Board of Equalization was transformed into the State Board of Tax Commissioners with two non-official members, who devote their public services wholly to the business of this board.¹ Out of the fifty years experience, there has developed the present strongly centralized system of taxing corporations. It is based upon the legislation of 1891, modified somewhat by subsequent acts. Without following the changes in detail the existing methods of taxing corporations will be summarized here.

II. *The Present System of Taxing Corporations.* The two fundamental principles² of the system are these: (1) All property, tangible or intangible, is subject to taxation and must be assessed at its true cash value; and (2) all corporate property, including capital stock and franchises, except where some other provision is made by law, is to be assessed to the corporation as to a natural person in the name of the corporation at the place where its principal office in this State is situated. Corporations may be classified according to the manner of assessment into three classes: those assessed by local officers; those assessed by State officials who apportion the appraisement among the counties according to a fixed rule; and those paying an excise tax or business tax directly to the State treasury.

(a) *Corporations assessed by local officers.* All domestic corporations, except those specifically designated hereafter, are assessed by the township assessors and the county boards of review. They are required to submit to the proper township assessor a statement containing the facts called for in 1872³ and, in addition, items showing: (1) the difference in value between all tangible property and the capital stock; and (2) the name and value of each franchise or privilege owned or enjoyed by each corporation.⁴ These corporations

¹ See sect. 2 above.

² *Laws of Taxation*, 1901, sects. 12, 53, 95.

³ See page 286 above.

⁴ *Laws of Taxation*, 1901, sect. 73.

are assessed upon their *tangible* property by the township assessor just as individuals are. In case the value of the *capital stock* and *franchise* of any such corporation exceeds that of the tangible property listed for taxation, the excess is assessed to the corporation by the county board of review. If no tangible property is returned or found and the capital stock has a value, it is assessed at its true cash value. If the value of the tangible property is greater than that of the capital stock and franchises, no assessment is made by the county board of review.¹

State and national banks (but not savings banks) are excepted from the operation of this law. The shares of such institutions are assessed to the owners thereof by the township assessor. A statement concerning the financial condition of each bank is required to be furnished the assessor to enable him to determine the true cash value of the capital stock. From this is deducted the value of real estate and other tangible property which is assessed to the bank as a corporation, and the shareholders are assessed personally for the remainder.²

Building and loan associations are also exempt from taxation as corporations. But the shareholders must pay taxes upon the true cash value of their shares. Those who have not borrowed money are charged with the true value of their shares, and must list them with other chattels. Those who have borrowed are taxed on the value of their real estate which is pledged as security.³

Foreign bridge and ferry companies are assessed by the township assessor upon the actual value of their property,

¹ *Laws of Taxation*, 1901, sect. 74.

² *Ibid.*, sects. 60-1.

³ *Ibid.*, sect. 89. This law was adopted after two unsuccessful experiments: (1) to assess each stockholder on the fair cash value of his paid-up stock (*Rev. Stat.*, 1881, sect. 6373); and (2) to assess the association as a unit upon the total amount of money paid in, less the amount loaned out. (*Laws*, 1887, p. 40.)

which is estimated by taking into consideration the tangible property and the character of the business as indicated by the gross receipts.¹

(b) *Corporations assessed by the State Board of Equalization.* The corporations assessed by State officers are without exception transportation companies (domestic and foreign). The confusion, inequality, and injustice arising from the conflicting claims and acts of different taxing districts has made this centralization inevitable.

The meaning of the term railroad has been extended * so as to include not only steam railroads, but all street railways and elevated or underground railroads, whatever the power by which their vehicles are propelled. The statements and schedules which must be returned are somewhat more elaborate than those prescribed in 1872; but the grouping of the tangible property into four classes remains the same.² No detailed method of making the assessments is laid down in the law. The State Board of Tax Commissioners is not bound by the returns made by the railroads.⁴ They take into consideration all the elements which are usually considered in fixing the value of any kind of property;⁵ that is, the tangible property, the earning capacity, the condition of the property, the expense of operation, the value of the stock, the amount of bonds issued, *et cetera*. From statements made in the judicial decisions upon this question it may be inferred that "the mileage rule" is used⁶ in determining what proportion of the total value of an interstate railroad should be assessed for taxation in Indiana.

Telegraph, telephone, express, and sleeping-car companies,

¹ *Laws of Taxation*, 1901, sect. 72.

² *Laws*, 1901, p. 121.

³ *Laws of Taxation*, 1901, sects. 76-88.

⁴ *Ibid.*, sect. 129.

⁵ *Pittsburg, etc., Ky. Co. v. Backus*, 133 *Ind. Reports*, 546.

⁶ See note 5 above, also 154 *U. S. Reports*, 421.

"fast freight" lines, and pipe-line companies not wholly situate in one county, are required to return to the Auditor of State annual statements similar to those demanded of railroads with some other items peculiar to their business.¹ In making the assessment² the State Board of Tax Commissioners first ascertains the true cash value of the entire property owned by such an association or corporation by adding to the market value of the aggregate shares (or to the actual value of the capital, in case there are no shares of stock) the total amount of mortgages upon the property. This is the "gross value." To ascertain the true cash value of the property in Indiana, they deduct from the gross value the assessed value of the real estate situate without the State and not specifically used in the general business of the company; of the remainder they take that proportion which the mileage operated by the company in Indiana bears to the total mileage operated.³ This gives the entire value within Indiana. From this is deducted the assessed value of all the real estate, structures, machinery and appliances within the State subject to local assessment. The residue is assessed by the Board to the company and apportioned among the counties on the mileage basis. A similar apportionment is made among the townships of the respective counties. The county auditor adds to the value apportioned, the valuation assessed locally upon real estate, structures, machinery, et cetera, and extends the total upon the tax duplicates.⁴

(c) *Corporations paying a business or excise tax.* In the third class of corporations mentioned above⁵ there are only

¹ *Laws of Taxation*, 1901, pp. 131-8.

² *Ibid.*, pp. 138-140.

³ In the case of a pipe-line company, it is the proportion of the length, size and value of its pipe lines.

⁴ *Laws of Taxation*, 1901, pp. 140-1.

⁵ See page 293 above.

two kinds—foreign insurance companies and foreign and domestic navigation companies. The tax on foreign insurance companies is a continuation of that imposed in 1873.¹ The tax on navigation companies is the latest phase of legislation on this subject. Every domestic navigation company and every owner of any ship or other vessel registered in Indiana under the navigation laws of the United States, is required to pay annually into the treasury of the State a sum equal to three cents per net ton of registered tonnage of all vessels owned. The capital stock of any such company is not taxed as in the case of other corporations; but all personal property owned by it, excepting vessels and other actual tangible property outside the State, is subject to taxation at the place where the home office is situated.²

The tax laws of 1891 and 1893 met with opposition from a large and influential class of citizens and tax-payers. But their constitutionality was sustained in all the courts from the lowest to the Supreme Court of the United States.³ The corporations, as a rule, no longer resist their enforcement, though protesting that they are unjust.

While the tax law is still imperfect, it has improved the financial standing of the State, and has distributed the burdens of taxation more equitably. The increase of 143 per cent. in the assessed value of railroads and 168 per cent. in the value of telegraphs for 1891 was very pleasing indeed.⁴ But the increase in the ten years since has not been so encouraging. In fact, the assessment of railroads for 1901 was

¹ See page 290 above. *Laws of Taxation*, 1901, sect. 67.

² *Laws*, 1901, pp. 185-6. If this law should be tested in the courts of the United States, it would, in all probability, be held unconstitutional.

³ 141 *Ind. Rep'ts*, 281; 144 *Ind. Rep'ts*, 549; 154 *U. S. Rep'ts*, 421; 166 *U. S. Rep'ts*, 185; 163 *U. S. Rep'ts*, 1.

⁴ See page 276, foot-note 4, for figures.

\$4,000,000 less than it was in 1891.¹ In the meantime the railroad mileage in the State had increased from 1890 to 1900, 454 miles, which would represent an investment of at least \$12,000,000. Still more important is the fact that the years 1900 and 1901 were the most prosperous² the railroads had enjoyed for many years.³ In the case of unincorporated telephone companies the valuation is made by the local assessors, generally at a figure below that fixed by the State Board on similar incorporated companies. The method of assessing banks is not satisfactory. The cause of the dissatisfaction is found in the fact that the authorities differ in the way of arriving at their value. In some counties the total of the capital stock, surplus and undivided profits is taken as the basis of valuation; in others, the capital stock alone is taken. The assessments varied in 1901 all the way from \$40 to \$283 per share. The banks in large cities and manufacturing districts were assessed at a lower rate than those in the small towns.⁴ The best remedy for this may be found in clothing the State Board of Tax Commissioners with supervisory or direct administrative authority over the assessment of banks.

¹ Assessment of corporate property 1901:

Railroad Companies.....	\$156,973,151
Street Railway Companies.....	7,746,452
Telephone Companies	443,663
Telegraph Companies.....	2,514,812
Express Companies.....	1,881,140
Sleeping-Car Companies.....	872,811
Pipe-line Companies.....	8,883,582
Total.....	\$183,308,611

² *Statistical Abstract of the U. S.*, 1901, pp. 390, 393-4.

³ This criticism loses some of its force by the recent action of the State Board of Tax Commissioners, raising the assessment of steam railroads for 1902 above that of 1901, \$5,824,836. Still, the present assessed value is only \$1,758,818 in excess of that of 1891.

⁴ State Tax Commissioner Parks M. Martin in the *Indianapolis News*, Feb. 6, 1902, p. 13.

Indiana has not by any means realized an ideal system of taxation. In order to show the superiority of the present partially centralized administration over the former decentralized method of taxation, it is not necessary to claim that the system is perfect or even better than that existing in some other State. It is the opinion of the writer that the evidence herein presented does demonstrate that centralization of administration has greatly improved the system by decreasing tax-evasion and equalizing the burdens of taxation. The fact that a large proportion of personal property has escaped assessment does not invalidate this conclusion, but rather emphasizes its soundness. For it is in this particular field that the State Board of Tax Commissioners had almost no authority until 1901. Even if the conferring of more extensive power upon the State Board should fail to correct the defects which are inherent in the general property tax, this would not disprove the fact that great benefits have been already derived from its existence. Such a failure would, however, furnish additional testimony that the evils of the general property tax are so deep-seated that they cannot be up-rooted even by a strong-toned central authority. It would confirm the opinion that justice in taxation can be realized only by a further disintegration of the general property tax and a separation of the sources of local and State revenues by the assignment of fees, business taxes and taxes upon real property to local authorities, and inheritance taxes, corporation taxes based upon net earnings or capital and funded debt, and, possibly, an income tax to the State government—the administration of the State revenues being placed under the supervision of State officers. Amendment of the Constitution would be necessary to accomplish some of these ends. Under the existing restrictions¹ of that instrument, a centralized adminis-

¹ *State ex rel. v. Indianapolis*, 69 *Ind. Rep'ts.* 375.

tration of the tax system is essential to maintain its present efficiency or to contribute to its improvement.

4. THE ABSENCE OF STATE CONTROL OVER LOCAL FINANCES.

It has already been shown how thorough was the central supervision over local finances in the early territorial period¹ and how this control was gradually abandoned until complete decentralization was attained at the time of the adoption of the Constitution.²

Not only was there lack of uniformity in the keeping of accounts, but there was great diversity in the organization of the the bodies charged with the county and township business. This was due to the evil of special legislation. At one time there were in existence four kinds of county boards: an elective board of three county commissioners;³ a board composed of all the justices of the peace of the county;⁴ a board composed of one justice of the peace from each township of the county;⁵ a board composed of one supervisor from each township.⁶ In some counties the township officers were elected;⁷ in others they were appointed by the board performing the county business;⁸ in others some officers were elected and others appointed.⁹ The officers of the same name in different counties did not have the same powers and duties. As early as 1835 Governor Noble saw the possible evil and confusion that might arise from this want of uniformity.¹⁰ In 1841 the Auditor of

¹ See pages 246-7, 251-2 above.

² See pages 252-3 above.

³ *Laws*, 1816-7, p. 115, and 1826-7, pp. 15-18.

⁴ *Rev. Stat.*, 1824, p. 86.

⁵ *Laws*, 1825-6, p. 84, and 1826-7, pp. 15, 18.

⁶ *Ibid.*, 1825, pp. 43-6.

⁷ *Ibid.*, 1825, pp. 43-6; 1825-6, p. 84; 1826-7, pp. 15, 18; 1828-9, p. 63; 1829-30, p. 27.

⁸ *Laws*, 1828-9, pp. 20, 21, 23.

⁹ *Ibid.*, p. 23; 1834-5, p. 72.

¹⁰ *Message, Sen. Journ.*, 1835-6, p. 22.

State urged the introduction of a more perfect organization of the civil townships which would dispense with a number of local officers and would insure the greater safety of funds.¹

The Constitution of 1851 prohibited such special legislation.² The next year all special laws providing for the transaction of public business in counties and townships were repealed and general laws were substituted.³ The township trustees⁴ thus created were elected, and were practically independent of the county and State authorities in the levying of their taxes and the management of their moneys. In 1859 a slight check was imposed upon their powers by requiring the "advice and concurrence" of the county commissioners in making their tax levy.⁵ For nearly half a century the township trustee possessed more unlimited authority and discretionary power than any other officer in the State. His functions as a school officer and as overseer of the poor have been described above.⁶ He had almost a free hand in the levying of taxes and in the appropriation of revenues for two political corporations—the civil township and the school township. Besides, the auditing of his accounts was superficial and perfunctory. His authority was simply autocratic.

The power of the boards of county commissioners under the laws of 1852 was unrestricted by any central authority except that afforded by legislative and constitutional limitations. Not five years had passed before a "wholesome system of retrenchment . . . especially in county expenditures" was urged.⁷

¹ *Rept of Aud., Doc. Journ.*, 1841-2, *House Rep'ts*, p. 27.

² *Constitution*, Art. iv, sect. 22.

³ *Rev. Stat.*, 1852, i, pp. 224-5, 495-6.

⁴ Three in each township; after 1859, one in each township.

⁵ *Laws*, 1859, p. 222.

⁶ Pages 116-118, 149, 193-195 above.

⁷ *Communication of Treas of State to House*, Jan. 12, 1857, *Doc. Journ.*, 39th Sess., p. 407.

Beyond an inquiry into the amount of the fees and salaries of county officers,¹ nothing was done for many years. However, there was an unmistakable popular demand for reform in the administration of county affairs, and for the reduction of the fees of county officers.² Several laws providing a graduated scale of salaries for county officers were passed³ but were held to be unconstitutional. It was necessary, therefore, to amend the Constitution so as to enable the Legislature to enact a law grading the compensation in proportion to the population and the necessary services required.⁴ Not until 1895 was a satisfactory law of this kind passed.⁵

The high fees and salaries were not the only items of excessive expenditure. The indebtedness of local corporations increased rapidly. In general, the local taxation always greatly exceeded that imposed for State purposes. The aggregate amount not infrequently surpassed the State tax from three to four times.⁶ The importance of some additional limitation upon the power of imposing local taxes, appropriating revenues, and contracting debts was recognized. In 1874 the Auditor of State recommended that the debts of counties, townships, and cities should be reported every year.⁷ In 1881 the power of local authorities to contract debts was restricted by a constitutional amendment, limiting the amount of indebtedness which might be incurred by any "political or municipal corporation" in the State.⁸

¹ *Laws, Spec. Sess.*, 1861, p. 43.

² *Message of Governor Baker, Doc. Journ.*, 1871, ii, p. 37; *Message of Governor Williams*, Jan. 10, 1879, p. 22.

³ *Laws*, 1871, pp. 25-40; 1875 (*Spec. Sess.*), pp. 31-49; 1879 (*Spec. Sess.*), pp. 130 ff.

⁴ *Constitution*, Art. iv, sect. 22.

⁵ *Laws*, 1895, pp. 322-358.

⁶ *Rep't of Aud.*, 1873, p. 41.

⁷ *Ibid.*, 1874, p. 32.

⁸ *Constitution*, Art. xii, as amended.

In 1875 and 1883 a legal limitation upon the indebtedness which a township trustee might incur was provided, by compelling him to procure an order from the county board of commissioners when it might be necessary to incur any debt which would exceed the amount of funds available during the year for its liquidation.¹

These laws were not sufficient to remedy the abuses; and in 1885 a number of township trustees brought disgrace upon themselves and suspicion upon the office by the fraudulent issue of township orders.² The only other restraints imposed upon local financial officers were the requirements that county auditors should publish in a newspaper a statement showing all allowances made by the county commissioners at each session;³ and that township trustees should carefully register and number all orders and warrants, and should post and publish an annual statement.⁴ Such provisions did not meet the needs of the case. More stringent measures were demanded. Serious charges of inefficient management and fraudulent conduct on the part of county commissioners and township trustees continued to be made.⁵

There were two remedial courses open: either the State should extend its supervisory authority over these local financial officers; or there should be a complete separation of their legislative and executive functions. At the session of the Legislature in 1895 a bill for an act creating the office of Inspector of County Officers and Records was introduced in the Senate but indefinitely postponed.⁶ In

¹ *Laws, Reg. Sess.*, 1875, p. 162; 1883, pp. 114-5.

² *Rep't Supt. Pub. Instr.*, 1885-6, p. 177.

³ *Laws*, 1893, p. 342.

⁴ *Laws*, 1895, p. 159.

⁵ Papers read before the Indiana State Board of Commerce, Dec. 30, 1896, and Jan. 18, 1898. See *The Indianapolis News* of same dates; also editorial in same, Dec. 31, 1896.

⁶ *Sen. Journ.*, 1895, pp. 121, 163.

1897 and 1899 similar bills, with broader scope were introduced in the House and Senate but failed to pass.¹

So strong was the conviction that additional safeguards should be thrown around officers clothed with financial authority, that recourse was had to the other alternative. There was created in each county a council with power to levy taxes, make appropriations, borrow money, and sell or purchase real estate for the county when it exceeds \$1,000 in value.² The administrative powers of the county commissioners are still retained by them. In a similar way the chief legislative powers of the township trustee were transferred to a deliberative body known as the township advisory board. It is empowered to fix the rate of taxation for township purposes, appropriate revenues, audit the accounts of the trustee and to authorize the borrowing of money.³ These laws have not yet had a thorough test; but the first results seem to be satisfactory to the advocates of reform.⁴

In case this legislation proves inadequate, the next movement will probably be in the direction of a stronger central supervision. This would necessitate some yielding of our attachment to local self-government. Still, that sacrifice would be in the interest of more scientific methods of book-keeping, a regular and systematic auditing of accounts, a reduction in expenditures and a prevention of fraud and embezzlement. Such at least has been the experience of those States⁵ which have adopted a central control over local finances.

¹ *House Journ.*, 1897, pp. 82, 208; 1889, pp. 98, 178, 395, 935, 1665. *Sen. Journ.*, 1897, pp. 62, 177; 1899, p. 400.

² *Laws*, 1899, pp. 346, 349, 350, 354, 359, 360.

³ *Laws*, 1899, pp. 150-1, 154, 155-6.

⁴ *Rept of the Indiana Department of Statistics*, 1899 and 1900, pp. 64-67. *The Indianapolis News*, Sept. 18, 1901.

⁵ Especially North Dakota, Montana, Wyoming.

CHAPTER VI

POLICE

THE police power of a State is defined by the Supreme Court of the United States to be the power "to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."¹ This is a very comprehensive power, and extends to innumerable interests of the individual.

As society becomes more complex, and as the activities and responsibilities of the State widen, the new conditions and exigencies demand on the part of the administrative officers special knowledge and technical skill which the ordinary police officers do not possess. Hence, there must be a differentiation of the police authorities. Experts must be selected who are capable of dealing with the new conditions, and possibly it may be found advisable to put these officers directly under the control of State officials. This process has gone on until now we commonly use the term police to signify that body of officers whose duty it is to preserve order and to prevent and detect crime.*

The prime reason for granting the police power to the government is that the rights and liberty of the individual

¹ *Barbier v. Connolly*, 113 U. S. Reports, 27, 31.

* Compare Fairlie, J. A., *Municipal Administration*, p. 12. Such officers as sheriffs, constables, marshals, patrolmen or policemen, police magistrates, *et al.*, are included in the police force.

may not be subverted by the license or selfishness of others. But this extensive power in the hands of the government in turn exposes the people to a new danger—the tyranny of the government itself. For this reason it has been the traditional policy of the various commonwealths of the United States to grant to the local governments some participation in the exercise of the police powers.¹ Local communities are given in many cases the right to make ordinances and to select the persons charged with the enforcement of both these rules and the general laws of the State.

This deputation of authority to persons selected by the local communities does not imply that police officials are local or corporate officers. Decisions of the courts in several States have held that such officers are the agents of the State government.² The Supreme Court of Indiana has declared that “the police officers of a city are not its agents or servants.”³

In previous chapters it has been seen that special classes of officers have been intrusted with the administration of the educational, penal and correctional systems and the supervision of the public health. In this chapter we shall consider the various agencies which have been provided for the preservation of the peace, the protection of the life and health of the persons engaged in certain trades and professions, and for the safeguarding of the pecuniary interests of the people.

¹ Burgess, J. W., *Political Science and Comparative Constitutional Law*, Vol. i, pp. 215-6.

² See cases cited by Goodnow in *Municipal Home Rule*, pp. 88-90, 133-141; also by Fairlie in *Municipal Administration*, pp. 142-3. On the other hand, the courts of other States have held that such officers are local and municipal officers.

³ *City of Lafayette v. Timberlake, et al.*, 88 *Ind. Rep'ts*, p. 332. Compare also *State ex rel. Law v. Blend et al.*, 121 *Ind. Rep'ts*, p. 522; and *State ex rel. Terre Haute v. Kolsem*, 130 *Ind. Rep'ts*, 437.

I. *The Preservation of the Peace.* The second law¹ passed in the Northwest Territory provided for the establishment of courts and the appointment of court officers. A sheriff in each county was to be nominated by the Governor to continue in office during his pleasure. It was the duty of the sheriff to keep the peace and to execute all writs and processes appertaining to his office. He was also responsible for the safe-keeping of prisoners and the security of the jail.²

The act of 1790, authorizing the courts of general quarter sessions to divide the counties into townships,³ also empowered them to appoint in each township one or more constables who performed the services usually incumbent upon such officers. In 1799 their duties in respect to the preservation of the peace were extended and the office was made obligatory.⁴ There was no central control over constables other than that furnished by the courts. Although the sheriffs and coroners were appointed by the Governor and held at his pleasure, there is no evidence to show that the authority of the Governor was utilized to maintain a highly efficient police force.

After the adoption of the Constitution in 1816 the sheriffs and coroners were elected by popular vote with a tenure of two years.⁵ Constables were usually appointed by the county boards.⁶ In 1831 they, also, were made elective officers.⁷

The laws designed to protect life and property could not have been very effectively enforced, for we find the Revised

¹ Chase, i, p. 94-96, Aug. 23, 1788.

² *St. Clair Papers*, ii, p. 220. See also page 165 above. In the same year the office of coroner was established, which was also filled by the governor's appointees. Chase i, p. 102.

³ See page 22 above.

⁴ Chase, i, p. 238-9.

⁵ *Constitution of 1816*, Art. iv, sect. 25.

⁶ *Laws, 1816-7*, p. 154.

⁷ *Rev. Stat.*, 1831, pp. 103, 105. This general rule was modified by special laws.

Statutes of 1852 legalizing private associations which were formed "for the purpose of detecting and apprehending horse thieves and other felons." The members when "engaged in arresting offenders against the criminal laws" of the State, were "entitled to all the rights and privileges of constables."¹ This proved to be a power dangerous to personal liberty. For these associations arrested and punished individuals without bringing them before the ordinary legal tribunals of the State. The Governor recommended² the repeal of the law and at the same time urged that a reasonable compensation be allowed to the sheriffs and other police officers in order that honest and capable men might be willing to accept the offices. The law was not repealed but was modified somewhat in 1865,³ and still remains on the statute book as evidence of the incompleteness of the constabulary system.⁴

Soon after the Civil War there were charges that the efficiency of the police force in the cities was impaired and the purity of elections corrupted by employing it for political ends. It was believed that if some scheme should be adopted which would put the force on a non-partisan basis, it would improve the service, reduce its cost, and preserve the sanctity of the ballot. Suggestions of this nature were made from time to time; and in 1871 a committee of the Senate recommended a bill providing for the organization of a metropolitan district for Indianapolis.⁵ In 1883 the Governor, Secretary, Auditor and Treasurer of State were constituted a board to appoint in any city of 29,000 inhabitants

¹ *Rev. Stat.*, 1852, i, 318-320.

² *Message of Governor, Doc. Journ.*, 1858-9, Pt. ii, p. 175.

³ *Laws, Spec. Sess.*, 1865, p. 196.

⁴ *Rev. Stat.*, 1901, sects. 4491-5.

Sen. Journ., 1871, pp. 345-8. The bill was indefinitely postponed by a vote of 23 to 22.

according to the census of 1880,¹ a bi-partisan Board of Metropolitan Police to consist of three commissioners. The term of the commissioners was three years; but they were subject to removal at any time by the appointing board. These Boards were required to take oath that they would not remove or appoint any policeman or officer because of his political opinions. They had power to appoint a superintendent of police and all members of the police force, who were to be selected equally from the two leading political parties of the city. All appointees were to serve during good behavior, but were removable for cause by the Boards. They also had power to make general rules and regulations for the government and discipline of the force.² The opponents of the bill claimed that it violated the principle of local self-government and that its main purpose was to give one political party, having a majority of the central appointing board, control over the police and a large part of the expenditures of the two leading cities of the State.³ The composition of this board⁴ did lend some color to the accusation. But the law seemed to work satisfactorily, and, excepting the provisions requiring of members a residence of three years and restricting the appointment to two political parties, its constitutionality was upheld.⁵

A new act was passed in 1889, creating a Board of Metropolitan Police and Fire Department in each city having 29,000 or more inhabitants. The first members of the board were elected by the General Assembly, and their successors were to be appointed by the mayor of each city. They

¹ The only cities in this class were Indianapolis and Evansville.

² *Laws*, 1883, pp. 89-91.

³ *Brevier Legislative Reports*, 1883, p. 234.¹

⁴ The Governor belonged to one party and the other members belonged to the party dominant in the General Assembly.

⁵ The State *ex rel. Law v. Blend et al.*, 121 *Ind. Rep'ts*, pp. 514-523.

were to be selected from the two leading political parties. They had complete control of the police and fire departments.¹ Without delay two cases came before the Supreme Court, and within sixty days after its enactment the law was declared void on the following grounds: (1) It granted special privileges and immunities by creating a residence qualification and prescribing a political test; (2) It placed the police and fire departments of certain cities and the property connected therewith under the exclusive control of a board elected by the Legislature, and thereby denied the communities the right of local self-government;² (3) the power to make such appointments was an executive function which could not be exercised by the Legislature.³ In one decision the courts pointed out with emphasis that the right to maintain a fire department was an element of self-government which was vested in the people of the municipalities;⁴ that the provisions of the statute relating to the management of that department were void; and that, inasmuch as these provisions were so intermingled with, and dependent upon, the other provisions, the whole act fell.⁵ With practically the same reasoning the Supreme Court has recently declared invalid⁶ a later law authorizing the Governor to appoint a

¹ *Laws*, 1889, p. 222-5.

² The court admitted that if the act related alone to the management of the police department a different question would have been presented, p. 437.

³ *Evansville v. State ex rel. Blend*, 118 *Ind. Rep'ts*, pp. 435, 436-7, 440-7; and *State ex rel. Holt v. Denny, Mayor*, 118 *Ind. Rep'ts*, pp. 457-467, 469, 475, 478-80.

⁴ *State ex rel. Holt v. Denny, Mayor*, 118 *Ind. Rep'ts*, pp. 473-5.

⁵ Another law of the same year (*Laws*, 1889, pp. 247-254), empowering the General Assembly to appoint in certain cities a board of public works and affairs, with exclusive control over the streets and other thoroughfares, public buildings, and the supplying of water and light, met the same fate. (*The State ex rel. Jameson v. Denny, Mayor*, 118 *Ind. Rep'ts*, pp. 389, 394, 400.)

⁶ See report of the decision in *The Indianapolis News* for Feb. 26, 1902, p. 1.

board of public safety for the city of Fort Wayne, with exclusive control over matters relating to the fire and police departments.¹ The law of 1883 was amended in 1891² so as to avoid the unconstitutional features. In the opinion upholding its validity the court more clearly set forth the theory that "in providing for the appointment of officers connected with the constabulary of the State, there is not an invasion of the right of local self-government." "A municipal corporation is not clothed with a vested right in a public office, nor indeed does it possess a vested right in public property."³ The party which at first opposed this centralization of authority has since extended it,⁴ until now the law applies to all cities⁵ having a population exceeding 10,000 inhabitants with the exception of Indianapolis, Evansville, Fort Wayne, Terre Haute and South Bend. The success of the experiment is indicated by the words of Governor Matthews: "Their [the metropolitan police boards'] management of the police affairs of their respective cities has given such eminent satisfaction that there seems to be no disposition to return to the old system."⁶

This centralization of control over the police of cities did not remedy some of the evils which resulted from the lack of control over the sheriffs and constables. In cases of riots or mobs, threatening violence to persons or property, the sheriff alone had authority to request the Governor to send militia to quell the disturbance. There were instances where

¹ *Laws*, 1901, pp. 142-3.

² *Ibid.*, 1891, pp. 90-2. Not more than two members were to be of the same political party. Indianapolis was not included within its scope.

³ *State ex rel. City of Terre Haute v. Kolsem et al.*, 130 *Ind. Rep'ts.* p. 437.

⁴ *Laws*, 1893, pp. 284-5; 1897, pp. 90-96; 1901, pp. 24-5.

⁵ Fourteen in number. The exclusion of the five chief cities from the operation of the law seems to be inconsistent; but non-partisanship in the management of the police departments is secured by the provisions of their special charters.

⁶ *Message of Governor Matthews*, 1895, *House Journ.*, 1895, p. 58.

sheriffs, influenced by partisan, friendly or other considerations, were dilatory or neglectful in the performance of their duties. The Governor, therefore, recommended the enactment of laws enabling him in his own name to institute in the courts, actions to enjoin and prevent the commission of any acts against property, public peace, morals, health or public policy, or in violation of any statutes; empowering him to suspend for a limited period any sheriff or other executive officer of the counties or cities who should fail or refuse to perform the duties enjoined upon him by law, and to appoint temporarily some person in his place, the Governor being required to report the facts to the General Assembly; and authorizing him to apply to the circuit court of the county for the removal of any sheriff or other executive who should persistently fail, neglect or refuse to perform the duties required of him by law.¹ A bill of such a purport passed the House, but failed to come to a vote in the Senate, in spite of a special message from the Governor urging its passage. However, authority was granted the Governor to send, upon his own information, the militia into any county where a disturbance might prevail; and the right to call upon the Governor for the militia was given to the mayor of any city, a court of record sitting in any city or county, or any judge thereof, as well as to the sheriff.² This makes it less likely that the peace and property of a community will be exposed to mob violence because the sheriff may sympathize with the unruly element.

It is not merely in times of excitement and turbulence that the State suffers on account of the absence of central control over the police. Annually it loses a considerable revenue through the evasion of the laws requiring a license

¹ *Message, House Journ.*, 1895, pp. 33-4.

² *House Journ.*, 1895, pp. 390 and 794; *Sen. Journ.*, 1895, pp. 872 and 1072.

³ *Laws*, 1895, p. 116, sec. 116.

for the sale of liquors. One influential paper¹ has estimated that "there are more unlicensed drinking places² in the State than licensed." It is the duty of the peace officers—town and city marshals, policemen, sheriffs and constables—to enforce the liquor laws;³ but their indifference or connivance gives opportunity for numerous violations of them. It has been suggested that there should be created the office of State license inspector, with authority either in person or by deputy to visit any place where liquor is sold and demand the exhibition of the license. Such an officer would be free from the local and personal influences which seduce local officers from an impartial enforcement of the law.

An even more radical departure is favored by numerous members of the State Municipal League. In brief, they advocate the appointment of constables by the township advisory boards. These officers should be under the supervision of a county superintendent of police, who would be superintendent or chief of police in the county seat. County and township police officers should be under the general supervision of a State Superintendent of Police appointed by the Governor and subject to removal for cause. This officer would have only advisory power over the local police forces. It is claimed that this intimate connection between all the police agents of the State would overcome the indifference of local officers, maintain public order more easily, facilitate the capture of criminals, make private detective associations⁴ unnecessary, remove some pretexts for white-cap organizations, drive criminals out of the State, and eventually would effect a considerable saving in public expenditures.⁵ These changes would not institute an infringement upon the rights

¹ *The Indianapolis News*.

² Drug stores, grocery stores and open bars.

³ *Laws*, 1895, p. 251, sect. 7.

⁴ See page 308 above.

⁵ See *Indianapolis News*, Oct. 11 and 19, 1899.

of local communities to regulate those matters which pertain exclusively to the comfort, well-being and prosperity of the people of the locality. For it has been shown that the preservation of the peace, and the protection of life and property are State functions,¹ and the State cannot shift this responsibility. It is reasonable, therefore, to insist that the State must devise some system of inspection and supervision by which it can compel the local officers to administer the police regulations prescribed by the Legislature, in harmony with the expressed will of the State. It remains for Indiana to do in this field, what she has already done in the sphere of education, charities and correction, public health and, in part, taxation.

III. *The Protection of the Life and Health of Persons Engaged in Certain Trades and Professions.* The police power of the State is exercised in no realm of greater importance than the protection of the life and health of the people. The instrumentalities which are used to prevent the spread of diseases and to protect the public against the impositions of quacks, have already been discussed in Chapter IV. In this section will be considered the means provided: (1) for shielding the general public from such dangers as only experts can discover; and (2) for the safety of those persons engaged in occupations which are considered especially hazardous to life and health. In some cases it may be found that the legislation has sprung from the combined motives of guarding the pecuniary interests and promoting the physical and social welfare of the people.

Inspection of Oils. Soon after petroleum oils came into use for illuminating purposes, the numerous accidents demonstrated the necessity of providing some means of testing the inflammability of this commodity. The first law² in Indiana (1863) was permissive in character. The initiative

¹ See page 306 above.

² Laws, 1863, pp. 27-30.

was taken by the citizens themselves, who¹ made application to the judge of the court of common pleas. He was required to appoint a suitable examiner to test such oils and to reject as dangerous those falling below a certain standard. Penalties were prescribed for the violation of the act, but no reports were required of the inspectors. Neither was it their duty to institute proceedings against the violators of the law. The increasing consumption of petroleum oil led to the elaboration of this law in 1879. In order to carry out more effectually its provisions the administration was placed in the hands of a State Inspector of Oils, who was appointed by the Governor,² and was subject to removal by him. The Inspector had authority to appoint deputies and to prepare the forms of brands and stamps, and the general rules and regulations for inspection. It was made the duty of the Inspector or any deputy to enter complaint before any competent court against any transgressor of the law. In case of willful neglect to bring such an action, he was to be deemed guilty of a misdemeanor, and upon conviction to be fined and removed from office.³ This thorough centralization secured uniformity of test and thousands of dollars' worth of property have been saved by excluding poor oils from the State.

Factory Legislation. Prior to the Civil War there are found no laws in Indiana which would fall under the title "factory acts." This is explained by the absence of the so-called factory system before that time. Since the war, however, governmental regulation has been introduced into this field. Such legislation had its beginning in 1867 and,

¹ At least five.

² In 1889, this power of appointment was conferred upon the State Geologist where it remained until restored to the Governor in 1901. *Laws*, 1889, p. 44; 1901, p. 518.

³ *Laws*, 1879, *Reg. Sess.*, pp. 162-167.

naturally, applied to children. In that year the employment of children under 16 years of age in any cotton or woolen factory for more than 10 hours a day was prohibited.¹ For nearly twenty years there was no further progress; but from 1885 to 1893 additional laws² in the interest of women and children were enacted. The spirit shown by these acts was good; but they had little practical effect; because no special officers were designated to administer them. Although it was specifically made the duty of the prosecuting attorneys to enforce the acts of 1891 and 1893, these officers had neither the time nor the inclination to make thorough inspections and investigations in order to ascertain to what extent the laws were violated.

A more comprehensive law was enacted in 1897. Along with other provisions it defined the term "manufacturing establishment" more explicitly; raised the minimum age limit of children employed in such establishments to 14 years; prohibited the employment in them of males under 16 years of age and women under 18 years, for more than 10 hours per day or 60 hours per week; fixed the minimum age of persons operating elevators at 15 years;³ forbade the use of tenement houses for shops, except upon the written permit of the inspector; and, finally, created the office of Factory Inspector. This officer is appointed by the Governor, with the advice and consent of the Senate. It is his duty to cause this act to be enforced and to see that all violations of it are prosecuted. For that purpose he is empowered to visit and inspect at all reasonable hours and as often as may be practicable and necessary all manufacturing

¹ *Laws*, 1867, p. 232.

² *Ibid.*, 1885, *Spec. Sess.*, p. 219; 1889, pp. 364-5; 1891, pp. 62, 331; 1893, pp. 147-8, 360.

³ In some cases at 18. In 1899, the minimum age of all such operators was made 18.

establishments. He has authority to demand a certificate as to physical fitness from some regular physician in the case of any child who may seem physically unable to perform the labor assigned to it; and to prohibit the employment of any minor that cannot obtain such a certificate. If he deems it necessary, he may require fire escapes, guards about dangerous machinery, retiring rooms for women and the lime-washing or painting of walls and ceilings.¹

Employers as well as employees were gratified with the improvement which soon resulted. Even business men who at first opposed the law co-operated heartily in its enforcement and considered its provisions of advantage to themselves as well as to the operatives.² In very few cases was there any attempt to evade or obstruct the law, and many provisions for the comfort and convenience of employees were made even by those who were not subject to the law.³ In 1899 the provisions of the act were extended to mercantile establishments, laundries, renovating works, bakeries and printing offices. The terms "child," "young person," and "women" were defined to be respectively persons under fourteen, persons over fourteen and under eighteen, and females over eighteen years of age. The employment of women and girls in any capacity in manufacturing establishments between 10 p. m. and 6 a. m. was absolutely prohibited. The execution of the law was put in charge of a Department of Inspection, with a Chief Inspector appointed as in 1897. The Inspector and his deputies have power as notaries public to administer oaths and take affidavits in matters connected with the law.⁴

The Chief of the Department of Inspection is also charged with the enforcement of the law of 1899,⁵ providing for the

¹ *Laws*, 1897, pp. 101-108.

² *Annual Report of Factory Inspector*, 1897, p. 4. ³ *Ibid.*, 1898, pp. 6, 7, 15.

⁴ *Laws*, 1899, pp. 231-240.

⁵ *Ibid.*, pp. 473-6.

protection of the public from fire. He has considerable discretionary power in regard to the character of the equipment, *et cetera*.

In 1901 the enforcement of the law providing for the sanitation of all food-producing establishments, the health of the operatives and the wholesomeness of the food products thereof, was also intrusted to the Department of Inspection.¹

While factory legislation has been chiefly in the interest of women and children, a few attempts have been made to protect the adult males employed in certain occupations.

The first industry in Indiana in which there appeared need of State interference to prescribe the conditions of labor in the interest of the health and safety of adult workmen, was coal mining. In 1879² a law forbade the employment of boys under fourteen years of age; specified certain requirements as to the ventilation, the number of outlets, the construction and examination of lifting appliances of mines; and required the employment of competent and sober engineers about the mines. It was at once apparent that the administration of the law could not be left to the regular police officers. Accordingly, in order to provide efficient examination and inspection of the mines and to insure the faithful execution of the law, its administration was placed in the hands of an experienced Mine Inspector appointed directly by the Governor.³ For several years there was more or less difficulty in the way of enforcing the act.⁴ But the principle of the law was maintained, its provisions extended, the penalties made more rigorous, the powers of the

¹ *Laws*, 1901, pp. 42-3.

² A bill passed the House in 1872 but failed to become a law. *House Journ., Spec. Sess.*, 1872, pp. 636-7.

³ *Laws, Reg. Sess.*, 1879, pp. 19-25.

Reports of Mine Inspector, 1883, pp. 7-12; 1884, p. 8; 1888, p. 10.

Inspector enlarged and the number of his assistants increased.¹ In 1889 the bureau was put under the control of the State Geologist, and the Inspector is now appointed by that officer. Since 1889, also, the expenses of the administration have been assumed by the State and not, as formerly, put upon the mine owners or the workmen.

When natural gas was discovered in Indiana, it was quickly seen that special legislation was necessary to protect the lives and material interests of the people. Town boards and city councils were empowered to provide by ordinance reasonable regulations for the safe supply, distribution and consumption of natural gas within their respective limits.² In 1889 regulations in regard to the drilling and casing of wells and the piping of gas were prescribed.³ At the same time the office of Inspector⁴ of Natural Gas and Natural Gas Piping was created, to be filled by an appointee of the State Geologist. It is his duty to see that every precaution is taken to insure the health of the workmen employed in opening natural gas wells and in utilizing their supplies; that the provisions of the laws in regard to natural gas are faithfully carried out; and that the penalties are enforced for any violation of them. The scope of the law has been broadened by subsequent prohibitions and restrictions,⁵ and by increasing the powers of the Inspector of Natural Gas.⁶ In spite of all these measures there still exist complaints of the wasteful use of this natural resource.

In 1889 a law declared eight hours to be a legal day's work for all classes of mechanics, workingmen and laborers, excepting those engaged in agricultural or domestic labor; but it permitted overwork for an extra compensation by

¹ *Laws*, 1883, p. 76; 1889, pp. 445-7; 1891, pp. 57-62, 73-4; 1897, pp. 127-8, 269, 270; 1899, pp. 382-3; 1901, pp. 540-1.

² *Laws*, 1887, p. 36.

³ *Laws*, 1889, pp. 369-372.

⁴ *Ibid.*, p. 47.

⁵ *Ibid.*, 1891, pp. 55, 89; 1893, pp. 300-1.

⁶ *Ibid.*, 1899, p. 83.

agreement between employer and employee.¹ This proviso has deprived the law of all its strength.

Of much more service have been the laws regulating the payment of wages. In 1887 employers engaged in mining or manufacturing were required to pay their employees every two weeks in lawful money of the United States.² In 1891, in certain industries, weekly payment of employees was required.³ Two years later there was a return to the bi-weekly method.⁴ No special officers were charged with the enforcement of any of these acts and, consequently, laborers seldom complained for fear of discriminations against them or loss of employment. The act of 1899,⁵ providing for the weekly payment of wages,⁶ prohibiting employers from assessing fines against the wages of employees and forbidding the assignment of future wages, was more successful. It is made the duty of the Department of Inspection to enforce the provisions of the act by judicial processes in the name of the State.

Because of the extensive growth of the use of steam as a motive power and of the numerous casualties on account of the defective construction and unsafe condition of engines, there has been a demand for the official inspection of all steam-boilers.⁷ A number of bills providing for the inspection of boilers by a State officer and for the licensing of engineers by a State examiner or board have been introduced in the General Assembly,⁸ but none of them has yet passed.

¹ *Laws*, 1889, p. 143.

² *Ibid.*, 1887, pp. 13, 14.

³ *Ibid.*, 1891, pp. 108-9.

⁴ *Ibid.*, 1893, p. 201.

⁵ *Ibid.*, 1899, pp. 193-4.

⁶ The Labor Commissioners were authorized to make exemptions after hearing both parties in case they both preferred a less frequent payment.

⁷ *Messages of Governors, Sen. Journ.*, 1887, p. 61; *House Journ.*, 1889, p. 44; *House Journ.*, 1895, p. 631; also *Report of Factory Inspector*, 1898, pp. 12, 13, 24.

⁸ *House Journ.*, 1889, p. 667; 1891, pp. 62, 620-1; 1893, pp. 455, 707; 1895, pp. 92, 148; 1897, pp. 509, 1023; 1899, pp. 177, 697. Two of these bills passed the House, but failed in the Senate.

III. *The Protection of the Pecuniary Interests of the People.* In the United States it has been generally held that, in his material or pecuniary affairs, the individual should be self-dependent; and that the State should do nothing which the individual could do as well himself, or which being done by the State, would undermine his self-reliance or make him less responsible and less vigilant. As society has grown more complex; as fiduciary institutions have multiplied; as business enterprises are more and more carried on by means of corporations where the resources are furnished by many, but where the management is conducted by a few; the need of governmental inspection and examination in the interest of the individual has become imperative. Even in cases where annual statements are published, they are often too complex for the laymen to understand. The innocent investors, depositors or other creditors must, therefore, look to the State for assurance that certain financial institutions are conducted upon sound business principles. Publicity enforced by the State is becoming more and more essential to secure honest management and safety of investments and to protect the general public. Now, the ordinary police officers and magistrates are not competent to execute such laws as may be enacted for this purpose. Recourse must be had to those who have technical knowledge and expert skill, and who are removed from the influence of local prejudices and favoritism.

Prior to 1852 few official reports were required from financial, insurance or other credit companies. As the State owned one-half the stock of the State Bank of Indiana, it was necessary in self-protection to insist upon full and regular statements from that institution. The savings institutions incorporated after 1835 were usually required to report annually to the General Assembly.¹ No examination was

¹ *Special Laws*, 1835-6, pp. 146, 164, 177, 183, 205, 222, 225, 240, 279, 280,

authorized until 1869, when provision was made for an examination at least once in two years by the Auditor or his agent.¹ The "free banks" which were authorized under the act of 1852² were required to make semi-annual statements of their condition to the Auditor of State; but no authority to make examinations was given. Later all corporate banks,³ loan and trust or safe deposit companies⁴ were declared to be subject to official examinations similar to those made in the case of national banks. Individual or private banks are not subject to these checks. As they do a regular banking business, the public should have the same opportunity to be informed from time to time of their condition.

Although the organization of building, loan fund and savings associations was authorized as early as 1857,⁵ no official reports nor examinations were required until 1893. The Auditor was then constituted the building association inspector, with power to examine any association whenever he deemed it necessary. Annual reports are required to be made to him in all cases.⁶

Before 1852 no annual statement of the financial condition of insurance companies was required to be published;⁷ and the law⁸ of that year imposing such an obligation did not apply to corporations organized prior to that date. The frequent losses sustained by citizens of the State by reason

293; *Ibid.*, 1836-7, pp. 93, 246; *Ibid.*, 1838-9, p. 103. In a few cases no report was required. *Ibid.*, 1836-7, pp. 190-194, 261-266; *Ibid.*, 1849-50, p. 266.

¹ *Laws, Spec. Sess.*, 1869, p. 111. The annual reports were made to the auditor also.

² *Rev. Stat.*, 1852, i, pp. 158-9.

³ *Laws, Reg. Sess.*, 1873, pp. 26-7.

⁴ *Laws*, 1893, pp. 346-353.

⁵ *Ibid.*, 1857, pp. 75-9.

⁶ *Ibid.*, 1893, pp. 274-282.

⁷ *Spec. Laws, Sess.*, 1830-1, pp. 28, 33; *Ibid.*, 1835-6, pp. 116, 127, 146, 157, 191.

⁸ *Rev. Stat.*, 1852, i, p. 335.

of their having carried insurance in insolvent companies, led to the enactment of a law in 1865, which attempted to guarantee the ability of such associations to meet their liabilities. It forbade foreign insurance companies doing business within the State without first producing a certificate of authority from the Auditor.¹ He had no authority to demand reports or make examinations.² These restrictions proved inadequate. The Auditor in 1872 said that Indiana was greatly in need of legislation to protect the people from worthless insurance adventurers.³ An important amendment was made to the law in 1877.⁴ Comprehensive powers were granted to the Auditor to enable him to examine every detail of the business of any insurance company, whenever in his judgment such an examination was required for the interests of the policy holders. He had authority to revoke or modify any certificate of authority, when any condition prescribed by law for granting it no longer existed, and to institute prosecutions for any violation of the provisions of the law. Many insurance companies did not consider the law applicable to them and failed to comply with its provisions.⁵ In his report in 1882 the Auditor used these strong words: "The absence of suitable laws for the protection of the people from deception and imposition has made Indiana the favorite field for the successful operation of every conceivable form of swindling insurance."⁶ Since that time numerous amendments have been made to the laws giving

¹ To procure such a certificate, each company was required to file with the auditor a statement giving information as to the financial standing of the company and showing that it had at least \$100,000 of its capital invested in good stocks or bonds.

² *Laws, Spec. Sess.*, 1865, pp. 105-108.

³ *Rep't of Aud.*, 1872, pp. 94, 96, 99, 101.

⁴ *Laws, Reg. Sess.*, 1877, pp. 66-68.

⁵ *Rep't of Aud.*, 1881, p. xiii.

⁶ *Rep't of Aud.*, 1882, pp. 71-2.

the Auditor authority to make examinations; to require minute statements of all insurance companies² and fraternal beneficiary associations;³ and to demand a deposit of bonds or money in the case of foreign insurance companies. Similar restrictions have recently been imposed upon foreign trust or investment companies.⁴ The centralization of the administration of the laws regulating insurance has given to the citizens protection against fraudulent and reckless companies.

In still another field the State has tried to protect the people against frauds by the creation of a special officer with powers of inspection. In 1881 the office of State Chemist was established and it was made the duty of this officer to analyze commercial fertilizers, print the result of such an analysis in the form of a label and to furnish a copy of it to agricultural papers for publication. It was made unlawful for any person, thereafter, to sell such fertilizers without having a label furnished by the State Chemist attached thereto.⁵ The protection secured by it was only nominal, since it did not contain any provision looking to the detection of frauds after the analysis had been made. This defect was in part corrected in 1899 and 1901.⁶

In 1899 a further protection was afforded to the property interests of the citizens by the creation of the office of State Entomologist. This officer is appointed by the Governor. It is his duty to inspect all nurseries at least once a year; to inform the proper authorities of the presence of insects or fungi injurious to trees or plants; and to notify the owner of

² *Laws*, 1883, pp. 203-8; 1885, *Reg. Sess.*, pp. 54-8; 1899, pp. 64-7; 1891, pp. 413-4; 1893, pp. 174-180; 1897, pp. 319-327; 1899, pp. 31-4, 220-1; 1901, pp. 321-2, 408-9, 617.

³ *Laws*, 1899, pp. 177-187; 1901, pp. 315-317.

⁴ *Ibid.*, 1901, pp. 487-8, 549, 550.

⁵ *Laws, Spec. Sess.*, 1881, pp. 511-2.

⁶ *Laws*, 1899, p. 49; 1901, pp. 413-5.

any such affected stock that he must take measures to destroy such pests.¹

In 1901 there was established a State Forestry Board, the members of which are appointed by the Governor. One member, the secretary, is required to have "special knowledge of the theory and art of forest preservation." At present the chief function of the board is to collect, classify and disseminate information respecting forests, timber lands and forest preservation and to recommend plans for the establishment of State forest reserves.² The powers and functions of this bureau will doubtless be extended.

IV. *The Protection of Fish and Game.* As soon as fish and game began to grow scarce in Indiana, the wanton or unrestricted killing of them was forbidden by law and made a misdemeanor.³ But none of the numerous laws made it the especial duty of any officer to see to their enforcement. In 1881 the office of Commissioner of Fisheries was created; but he had no supervision over the execution of the laws restraining the killing of fish. His duty was to promote the propagation of fish.⁴ Nevertheless, he caused the conviction of a large number of fish pirates, although he had no more power to do that than any other citizen.⁵

In 1889 it was made the duty of road supervisors to arrest or cause to be arrested and prosecuted any persons violating laws for the protection of fish.⁶ This law proved a failure, largely because the officers had a personal interest in, or friendship for, the violators of the laws.⁷ However, the sen-

¹ *Laws*, 1899, pp. 224-6.

² *Ibid.*, 1901, pp. 62-3.

³ *Ibid.*, 1848-9, p. 94; *Rev. Stat.*, 1852, ii, p. 447; *Laws*, 1857, pp. 39, 40; 1863, p. 20; 1867, pp. 128-9; 1871, p. 24; 1875 (*Reg. Sess.*), p. 111; 1877, pp. 69, 70; 1879, pp. 242-5; 1889, p. 102-3.

⁴ *Laws, Spec. Sess.*, 1881, p. 516.

⁵ *Rep't of Com'r of Fisheries*, 1888, p. 6.

⁶ *Laws*, 1889, pp. 449-450.

⁷ *Rep't of Com'r of Fisheries*, 1896, pp. 10-12.

timent in favor of the protection of fish by the enforcement of the laws steadily grew and spread.

In 1897 it was made the duty of the Commissioner of Fisheries to see that all laws for the protection of fish were enforced, and to institute proceedings against all violators. He also had power to appoint one or more deputies in each county.¹ Within 18 months 244 convictions for violation of the fish laws were secured and the amount from fines which was turned over to the State more than doubled the whole appropriation for the administration of the laws.² This was accomplished without the possession of police powers by the deputies. Two years later such powers in respect to the fish or game laws were conferred upon the commissioner and his deputies; and their jurisdiction was extended over the laws designed to protect song-birds and game.³ The laws were made still more rigorous in 1901.⁴

It is interesting to note that in a number of the cases treated in this chapter, as soon as the need of protection or regulation was recognized, the first remedial measures were restrictive or prohibitive acts the enforcement of which was left to the initiative of individuals and the ordinary police officers and magistrates. As experience demonstrated the futility of this arrangement, special officers, having peculiar fitness for the work, were designated to see that the laws were obeyed. In some cases these have been put directly under the control or supervision of State officers clothed with considerable discretionary or administrative authority.

¹ *Laws*, 1897, pp. 109, 110.

² *Rept of Com'r of Fisheries*, 1897-8, pp. 14, 15.

³ *Laws*, 1899, pp. 44-6, 195-198.

⁴ *Ibid.*, 1901, pp. 77-80, 442-7.

CHAPTER VII

CONCLUSION

THIS detailed examination of administration in Indiana has shown that during the greater part of the territorial era—a period of tutelage—a closely centralized system existed. As soon as a State government was organized, the theory of local self-government was quickly applied to local matters and to many affairs properly belonging to the State administration. For twenty-five years there was little change in this respect. The steps leading to the present centralized system were, with few exceptions, taken in three distinct periods.

In the first period—from 1840 to 1852—the Treasurer of the State was made the Superintendent of Common Schools; the office of State Superintendent of Public Instruction was later created; laws authorizing general taxation for school purposes were enacted; the consolidation of school funds was effected; State institutions for the education of the blind and the deaf, and for the treatment of the insane were established; a State Board of Equalization was created, and the centralization of the assessment of transportation companies was begun.

During and immediately succeeding the Civil War—from 1861 to 1873—numerous advances toward centralization were again made. This is shown by the reorganization of the State Board of Education with broad general powers, the establishment of county boards of education and the creation of the office of county superintendent. The State assumed

the care of disabled soldiers and their dependent children, and founded the Reform School for boys, the Women's Prison and Industrial School for Girls. The power of the State Board of Equalization was extended over the assessment of all corporations.

The last period of development began about 1889 and has continued to the present. It has witnessed the increase of the powers of the State Superintendent; the establishment of compulsory education; and the extension of the power of the State Board of Education so that it controls the adoption of books, directs the high school policy and regulates the examination of teachers. The Board of State Charities has been instituted and numerous reforms in the penal and charitable systems have been made. The authority of the State Board of Health has been greatly enlarged.¹ An efficient regulation of the practice of medicine, dentistry, pharmacy and embalming has been undertaken; and the prevention and suppression of the diseases of animals have been attempted. Authority over the equalization of the assessment of personal property has been conferred upon the State Board of Tax Commissioners. The metropolitan police system² has been applied to more cities. Another evidence of the drift towards centralization in this period is found in the legislation concentrating in the hands of the mayors of the five largest cities³ the control over the administrative affairs of their respective municipalities.

The evidence already presented has been sufficient to demonstrate that this centralization has resulted in a more efficient administration, has secured a greater safety of funds,

¹ It was first established in 1881.

² First used in 1883.

³ Indianapolis (*Laws*, 1891, pp. 137 ff.); Evansville (*Laws*, 1893, pp. 65 ff.); Fort Wayne (*Laws*, 1893, pp. 202 ff.; 1897, p. 197; 1901, pp. 197 ff.); Terre Haute (*Laws*, 1899, pp. 270 ff.; 1901, pp. 94 ff.); South Bend (*Laws*, 1901, pp. 108 ff.).

has protected more thoroughly the interests of the whole people, has ameliorated the condition of the unfortunate classes for whose care and education the State is responsible, has led to the substitution of the reformatory in place of the vindictive principle in the management of the penal institutions and has helped to elevate the social and moral tone by diffusing knowledge and culture through the agency of the common schools.

In addition to the special causes mentioned heretofore in the discussion of particular phases of administration, attention may here be directed to some general causes and conditions which have prepared the way for centralization or have rendered it inevitable.

One of the first things deserving notice is the intimate relation between economic conditions and political ideas and policies. "The chief considerations in human progress are the social considerations and . . . the important factor in social change is the economic factor."¹ The growth of population is in a great measure determined by economic conditions, being dependent largely upon the productivity of industry and the standard of living. An increase of population is of itself a sufficient cause for the extension of governmental functions and a more careful organization of the machinery of administration. The following table shows the growth of population in Indiana since 1800:²

	1800.	1810.	1820.	1830.	1840.	1850.	1860.	1870.	1880.	1890.	1900.
Total population in thousands.	5	24	147	343	685	988	1,350	1,680	1,976	2,102	2,526
Density per square mile.....	0.02	0.7	4.1	9.6	19.1	27.5	37.6	46.8	55.1	61.1	70.1

This increase in the number of inhabitants has made inevitable a larger expenditure of public revenue and the bur-

¹Seligman, E. R. A., *The Economic Interpretation of History*, in *Political Science Quarterly*, Vol. xvii, p. 76.

²Twelfth Census of U. S., *Population*, pp. 2, 3, 6.

dens of taxation have consequently been greater. Increased taxes have impelled the taxpayers and the administrative officers to inquire into the means which might diminish this load. As a result of numerous experiments, it has been found that a greater efficiency of administration and a more just distribution of the burdens can be attained by establishing a considerable degree of centralization. The same cause has necessitated the expansion of the school system and the extension of the police powers of the State. Experience has again taught the same lesson in respect to administration in these fields.

There has been not merely an increase in the density of population but there have been marked changes in its distribution and in the occupations of the people. The following figures exhibit the percentage of the total population of Indiana dwelling in cities of 8000 inhabitants or more for each decade from 1850:

1850.	1860.	1870.	1880.	1890.	1900.
2.5 ¹	5 ¹	10 ¹	12.3	18.3	28.1

The development of city life has created new relations and presented difficult problems which have called for more and stricter governmental interference. The concentration of the population in cities is closely related to two other important economic factors—the transition from an agricultural to a manufacturing stage and the development of the facilities of transportation. Fifty years ago the value of the products manufactured in Indiana was only \$18,700,000 and her rank as a manufacturing state was fourteenth with 17 states below her; although on the basis of population she was outranked by only six states. In 1900, while holding the eighth place according to population, she ranks eighth

¹ Approximately.

as a manufacturing state with a product valued at \$378,000,000.¹

In an agricultural society, where each family or each community is very largely self-dependent, the conditions are comparatively simple. A complex industrial state is characterized by a high degree of specialization, a more minute division of labor and a localization of production, which render the social units more dependent upon one another for the satisfaction of their economic wants. Exchange of commodities becomes a more important economic process and a closer association results. To promote the interchange of goods and services, the facilities of transportation must be improved and increased. Such an economic transition must necessarily react upon the political theories and practices of the people. When the only means of communication in Indiana were blazed paths, corduroy roads, or a few canals and navigable streams, extravagance or corruption of municipal governments, and inefficiency in the local administration of the police laws, in the suppression of contagious diseases, in the care of the poor and even in the educational system, had relatively little effect upon the people of other communities. But as the means of communication and transportation² were multiplied and perfected, as capitalists

	1850.	1890.	1900.
¹ Value of manufactured products in mils. ..	\$18.7	\$226.8	\$378.1
Rank as a manufacturing state	14	11	8
Rank according to population	7	8	8

Tenth census of U. S., *Manufactures*, folio, p. 18; Twelfth Census, *Population*, p. 3, and *Bulletin*, 150, p. 11.

² Railroad mileage in Indiana:

	1845.	1850.	1860.	1870.	1880.	1890.	1900.
Total mileage.....	30	228	2,163	3,177	4,373	6,109	6,563
No. of miles to each 10,000 of population35*	2.3	16	18.9	22.1	27.8	26
No. of miles to each 1,000 square miles.....	.83	6.3	60.2	88.4	121.8	171.2	182.4

* Estimated.

made investments in various parts of the State and as people became more conscious of their economic interdependence, the evil consequences of disease, corruption, disorder and illiteracy were no longer isolated phenomena, but affected all parts of the body politic. The local interests became merged in those of the whole State. There was gradually unfolded a clearer view of the common weal; a higher State spirit was aroused, and a deeper feeling of sympathy and a keener sense of duty were disseminated. Hence, there followed an insistent demand for State control or State supervision over the administration of affairs which had formerly been wholly neglected or left to the uncertain and inefficient administration of local officers.

This economic transition has been coincident with, and affected by, that larger national and international movement towards the consolidation of industry. It is but natural that as the great effectiveness of consolidation in the field of production is realized, men should seek to apply the same methods in the domain of political administration.

Political events seem also to have had some influence in hastening the movement towards centralization. During the Civil War there was such an exercise of executive power by the President of the United States¹ and the Governor of Indiana² that it amounted almost to usurpation. It seems reasonable to assume that this exhibition of power by the administrative departments under the direction of the chief executives led many statesmen to approve of, or acquiesce in, the enlargement of the authority of central administrative officers. At least, in Indiana this was a period of rapid advancement towards centralization.³

The progress of science, especially of medical science, has

¹ Burgess, J. W., *The Civil War and the Constitution*, i, 232 ff.; ii, 114.

² Foulke, W. D., *Life of Oliver P. Morton*, i, pp. 188, 223, 253-5.

³ See pages 227-8 above.

contributed not a little to this movement. The demonstration of the truth of the germ theory of disease has disclosed the fact that many diseases are contagious. The public have been convinced that much suffering, death and sorrow would be unnecessary with the use of scientific methods of suppression under the direction or supervision of experts. This can best be secured by the establishment of a central authority.

The growth of the humanitarian spirit has done much to urge us towards this goal. There is a profounder sense of duty towards the helpless, the unfortunate and even towards the criminal. This sense of duty has led to the establishment of State and local institutions for the care, treatment, education, restraint or reformation of these classes; and has necessitated the expenditure of large sums of money. In addition, this sense of obligation and the burden of the outlay have forced the people and the statesmen to make a thorough investigation of the methods of dispensing charity and inflicting punishments, in order to ascertain whether the highest social good is accomplished in the most economical way. The scientific study of these problems has driven investigators to the conclusion that this end can not be attained without an increasing degree of centralization.

The progress towards centralization has been disputed at every point by the partisans of local self-government. This contest is one phase of the old controversy over the proper domain of local and central governments, which began with the organization of civil society and which will doubtless continue until the end of human government. The theory of local self-government has been so firmly established in America, that any scheme which seems to trespass upon its sphere must be justified by results of positive good. In this connection it is necessary to remember that any form of government is devised and instituted to promote the welfare

of the society within which it is established. No particular polity has received Divine sanction as being the only fit and appropriate form of government for all peoples, or for any people at all times and all stages of its progress. Governments are not absolutely, but only relatively, perfect. As the social and economic conditions of life change, as culture broadens and deepens, as ethical standards rise; so, political ideals and institutions must change in order that they may conserve man's highest interest. This view was reflected by Thomas Jefferson, who was an ardent admirer of local self-government.¹ He held that the earth belonged to the living and that the dead had no legal rights over it; that no society had any right to make perpetual laws; that changes of mind and culture must be accompanied by changes of government; and that a constitutional convention should be held every nineteen years for the purpose of changing the fundamental laws so that they would harmonize with the views of the living.²

If we accept the maxim that all exclusively local interests shall be controlled by the local government, we are immediately brought face to face with the question: What are local interests? What yesterday was of local concern only, may to-day be of vital moment to the whole State. It is the tendency among a progressive people for the personality of the individual to expand so as to include within its view the welfare of the neighborhood and the State. State control and supervision will be assumed more and more, as it appears that the interests of the whole State are at stake and not merely those of individuals or local communities.

After all, the restrictions imposed upon local governments by such action are more apparent than real. Since the perpetuity of democratic institutions depends upon having an

¹ Jefferson, Thomas, *Writings* (Ford's Ed.), ix, 427.

² *Ibid.*, v, 116-8, 121-2.

enlightened and self-contained population, the State must reduce to a minimum the evils of illiteracy and crime by the establishment of agencies for the education and elevation of all its citizens. This in turn will guarantee to the community and the individual a more genuine liberty and a freer opportunity for the realization of his best aspirations. If localities persist in tolerating unsanitary conditions which breed disease germs, the authority of the State must be invoked to abolish this menace to the public health of the entire commonwealth.

In the matter of charity and correction, local selfishness or short-sightedness may lead to the adoption of methods, or the tolerance of conditions, incompatible with an enlightened humanitarian sentiment and detrimental to the material interests of the whole State. The local community has no grounds for demanding the "liberty" to neglect human beings when they are gathered together in charitable or correctional institutions and subjected to revolting treatment or indecent surroundings. Whose "liberty" is infringed upon, when the State steps in to protect these helpless unfortunates? It is an interference only with the license, ignorance or indifference of incompetent or corrupt officials.

In respect to taxation—especially for the support of the Commonwealth—the State must not abdicate its responsibility by leaving wholly to the discretion or honesty of local officers the assessment of property. The disadvantages arising from such an arrangement have been examined in a former chapter.

Local self-government does not mean the right to select local officers and then to leave to their own discretion or their own honesty the enforcement of State laws. There must be behind them a power of compulsion. If this is not furnished by the locality where everybody's business is nobody's business, then the State must constitute authorities to

see that local officials do their duty or else take over entirely the administration.

Both theory and practice demonstrate that this gravitation towards centralization in administration is in harmony with our progressive political ideas, our pecuniary interests and our highest prosperity and happiness. This conclusion does not relegate the theory of local self-government to the limbo of obsolete doctrines. There will always remain a field within which the people of the respective communities will have free choice as to their policies. In general, it may be said, those public improvements which have an exclusively local interest, should be left to the wishes and the wisdom of the inhabitants of the localities concerned. They have better opportunities to ascertain the desires and the needs of the respective communities. This conclusion does not, therefore, mean an abandonment of the ideals of the Fathers. It does signify, however, that new limits must be set to the spheres of local activities and central jurisdiction as the social and economic needs may require a re-adjustment.

When conservatism becomes an irrational and unwavering devotion to particular forms or methods of government, it ceases to be commendable. The best evidences of political capacity and wise statesmanship are a willingness and a power to adapt old principles to new conditions and opportunities.

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STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY THE FACULTY OF POLITICAL SCIENCE OF
COLUMBIA UNIVERSITY

Volume XVII]

Number 2

PRINCIPLES OF JUSTICE IN TAXATION

BY

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Sometime University Fellow in Finance



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CHAPTER I

INTRODUCTION

A THEORY of taxation is necessarily bound up with fundamental questions of political science, economics and ethics. By abstracting any one of these elements and making it alone the determining factor, or by giving it an undue importance, a theoretical solution of the problem may be made a comparatively easy task. But such a solution, like most schemes based upon one-sided or partial truths, is necessarily defective and not infrequently utopian. The real difficulty arises when these factors are comprehended in their full significance, or in their true relation to one another; but only in this way can the problem be fully understood in its various bearings, or a solution be offered that is satisfactory alike to reason and to the requirements of justice. This difficulty is two-fold. In the first place our views will necessarily be colored according to which of these factors we consider the foundation-idea of our theory and which we regard as incidental or supplementary; and in the second place very much depends upon our interpretation of the fundamental idea and of the character of its relation to the other factors. Even if but one of these factors is considered as having any importance, the question is not altogether a simple one, for there still remains the difficulty arising from the interpretation we may give to the chosen factor as the only one for consideration. It is such facts as these that account for the general disharmony in theories of taxation.

An illustration of the difficulties referred to is found when

the political factor is made the only one or the fundamental one. For if, on the one hand, we regard the individual as the only important factor, and the state as merely an accidental but necessary evil, the tendency will be to an extreme of individualism; if, on the other hand, the individual be regarded as a mere part of an organic whole, a cell of a living organism, we are in danger of the opposite extreme of socialism. The one extreme tends to the contract theory of Hobbs, Locke and Rousseau with its individual independence and its protective theory of taxation; the other to a personified social organism which directs the economic activities of its units and utilizes taxation to produce artificial equalities of wealth. Both of these extremes are false, although they involve the important truth that principles of taxation are intimately associated with a political philosophy.

Not less are the difficulties, nor more satisfactory the results, if the question be approached from a purely economic point of view. Different theories will be maintained and different conclusions reached according as production, distribution, or consumption is made the basis of the economic theory. Moreover, different conclusions will result from different assumptions respecting economic principles, or from the importance attached to specific economic laws. If, for example, production under a *laissez faire* régime be regarded as the chief end of human activity, it will be concluded that taxation should interfere as little as possible with capital and its accumulation, while the relative productive powers of individuals should be the same after as before the payment of a tax. Or if there be implicit confidence in the doctrine of free competition there will be little concern about the tax system, the shifting and incidence of the tax through the action of competitive forces being relied upon to effect the ends of justice. Similarly we have only to exaggerate other economic elements to get other results.

So, too, the ethical factor may lead to equally divergent results according as Hedonistic or utilitarian principles, or the realization of the *idea* of man, is made the dominant feature of our ethical system. The difficulty is here further exaggerated by the fact that there is frequently a difference between theoretical and practical ethics. Harmony between these, whatever our ethical principles, is by no means easy to accomplish. Yet a substantial harmony must be established, or, on the one hand, we shall have only utopianism founded upon abstractions, and, on the other hand, expediency founded upon concrete facts without reference to ideas of justice.

But a more fundamental difficulty than that which arises within the separate factors themselves is the determination of their relative importance. Each one must receive due consideration; the political, because the relation of the state to the individual is primarily involved; the economic, because matters of taxation are essentially of an economic character; the ethical, because the subject and the end of the whole proceeding is *man*, a spiritual and therefore an essentially ethical entity. But which is the ruling factor? The importance of this question, together with the full recognition of the separate factors, is so great that we shall treat this aspect of the subject somewhat at length before taking up the main question—that of justice in taxation. Indeed, this method of procedure is indispensable since the principles of justice can not be determined before the basis upon which they rest is established.

It may be premised here, however, that the whole subject of taxation revolves about man as its center—man in his relation to society, to his family and to himself; to the ends, that is, of his own existence. It has not, indeed, to do with the whole of man's activities and relations, but only with a small portion of them; in fact, with only a portion of those

involved in his political existence—the maintenance and support of the state, or what may be called the satisfaction of the collective needs of the individual. But because these needs and their satisfaction are common and involve *human* relations, an equitable distribution of the burden is demanded. In brief, the question of taxation is a part of the larger question of distributive justice. But it is not with ideal men or ideal conditions with which we have to do, but with actual men and conditions. Hence, the specific forms which the principles may take will depend upon the prevailing moral and intellectual, the political and economic development.

But while the ultimate end is ethical, the means thereto are largely economic. Both a theoretical and a practical determination of what is justice in taxation presupposes a knowledge of economic laws and of their influence upon the effects of any system of taxes.¹ It could not be otherwise, since all the phenomena concerned are economic. The end alone is ethical. But the ethical is not so far conditioned by the economic that it is only a consequence of economic laws. There are, however, certain fundamental principles in taxation (and it is these with which we shall have specially to do) that are not directly concerned with economic laws. They presuppose, indeed, certain economic conditions and certain economic forces, but their real justification is to be found in a political philosophy and in the ethical end of man. It is more directly with the practical side of justice that economic forces have their importance; although it is true that the theoretical principles of justice depend upon economic facts for their interpretation.

Notwithstanding this close relation of the economic and the ethical, they are entirely distinct, being related as means to an end, or as proximate and ultimate ends. This fact is

¹ Cf. Bastable, *Public Finance*, p. 9.

universally recognized in every financial doctrine; for, consciously or unconsciously, the ultimate sanction of every theory is its conformity to what are assumed to be the ends of justice. Even those who, like Sax, deny that ethics has any place in finance, are forced to this standard, as we shall have occasion to see later. With all, the attainment of justice in the distribution of the tax burden, is the ruling idea. Thus, in fact, as well as from the nature of the subject itself, the ethical element is made the predominating element in determining the principles of taxation. But unanimity of thought respecting the end does not guarantee unanimity of doctrine. Such agreement of doctrine depends upon the conceptions of ethical ideals, and in these the differences are as great as those already noted.

Finally, the difficulties of the problem of taxation and of the attainment of a common agreement of doctrine do not consist alone in differences of fundamental presuppositions or of ideals. Not the least of the difficulties is a logical consistency in the development of a theory from its presuppositions. Too frequently prejudice, sentiment or expediency usurp the place of logical thinking, which not unfrequently results in conclusions in no way related to the premises assumed, even if they are not in direct opposition to them.

Without a further enumeration it must be evident that the problem that we have assumed to discuss is full of perplexing difficulties. That we shall be able wholly to avoid them can not be presumed, for many of them are inseparable from the subject itself. We must necessarily start with assumptions, and the merits of our treatment must be measured by the rationality of these assumptions and the logical consistency with which the idea contained in them is developed. A philosophical or scientific treatment must further be devoid of any personal bias. While it shall be my aim to attain this standard there will undoubtedly be some who

will consider my point of view, if not my reasoning, vitiated by an undue ethical emphasis. But apart from the fact that the real subject of my study is an ethical one, I believe that in emphasizing the ethical element of the problem I am only recognizing what is implied, if not expressed, in other theories. While we start out with the idea of ascertaining the principles of justice in taxation we endeavor to start without any presuppositions as to what those principles are. Our presuppositions are in the assumption of fundamental principles, not in the conclusions; but without such assumption no rational treatment of the subject is possible.

What, then, is the assumption with which we start out? It is the conception of man as a personality, and as such as an end in himself whose fullest realization is the purpose and end of his existence; and that this realization takes place very largely in and through institutions, one of the most important of these being the political institution—the state. The assumption, however, is not a *mere* assumption. It has rational justification; but the demonstration of this belongs to the field of metaphysics¹ and for our purpose will be presumed. Of special and more immediate importance to our thesis is the relation of the state to the individual in this process of realization. Hence, a conception of the nature of the state and its relation to the individual will constitute the foundation of our thesis and form the basis of our argument. What the nature of the state is belongs to political philosophy to determine; but since political philosophy affords so many different conceptions of the state, and since our own argument must depend upon our own conception, it will be necessary to lay our own foundations by first discussing the origin and nature of the state before discussing the principles upon which the state should be maintained—or the principles of taxation. This we shall

¹ See T. H. Green's *Prolegomena to Ethics*.

attempt to do in the following chapter so far as is necessary to make clear our own point of view. We shall then discuss the nature of taxation and its relation to economics and ethics, after which we shall take up the subject of our thesis proper.

Before beginning our discussion, however, it may be well to clear up an ambiguity suggested in the wording of our subject. "Justice in Taxation" may be considered either from a practical or from a theoretical point of view. Under the former the subject would involve the setting forth of a detailed system of taxes that would realize justice to the individual taxpayer. A theoretical treatment, on the other hand, involves a discussion of principles rather than of kinds or systems of taxes. It is the latter view that forms the chief subject of our inquiry, although from neither point of view can a discussion of justice in taxation wholly ignore the effects of taxation; as, for example, the phenomena of shifting and incidence are closely related to the problem of rates and exemptions. Principles, however, must precede definite systems just as a fundamental assumption must precede the determination of principles, for without a norm of judgment no definite conclusions are possible.

The necessity of this norm must be our answer to the "practical man" who distrusts all theorizing not based upon empirical facts alone, and who seeks to determine justice in taxation by purely objective standards. Such a procedure is, to our mind, comparable to the attempt to obtain a knowledge of an object from mere sensations without reference to a unifying and interpreting agency to give them meaning. Like sensations, *mere* facts are without significance. The so-called facts of the empiricist must be given a meaning by reference to fundamental concepts. The principles once established, it is for the practical statesman or financier to put them into operation. If the principles

are not practicable they must be considered as utopian, at least under existing conditions. The ideal, however, has its place and importance, but the necessity of its modification in practice according to circumstances must be recognized. The nearest approximation to justice is always the ideal under any given conditions.

CHAPTER II

THE ORIGIN AND NATURE OF THE STATE

A STUDY of the origin and nature of the state is a necessary preliminary to a study of the nature of taxation and is indispensable as a foundation for the determination of the principles on which taxation should be based. It furnishes, moreover, an explanation of the reason why these principles should be based upon ideas of justice. That justice should be the aim in all taxation, is now universally admitted, and appears, indeed, so self-evident that proof is deemed unnecessary; but the proof is always implied, and is to be found in the nature of the state, or rather in the nature of the individual and his relation to the state.

I. THE INDIVIDUAL AND SOCIETY

The nature of the state is determined by the nature of society as the nature of society is determined by the nature of the individual. But the individual and society are so intimately related that they mutually condition each other, and hence our study must begin with a study of the individual and society.

Beginning, then, with man, the individual, it is possible to conceive of him in three different aspects: As related to himself, that is, as a distinct personality; as related to society, or as a complex personality; and as related to the Infinite, or as a permanent personality. These three aspects are expressive of the ethical, social and religious nature of man, and without their co-ordination we have only the imperfect and undeveloped man. Our concern, however, is

with only the first two of these aspects—man the individual and man in society. In respect to the former we assume, and without attempting a metaphysical proof, that man is a human spirit and, as such, a personality, and therefore exists as an end in himself; that it is the purpose of his life to realize that end—to develop his highest personality, to perfect himself. Otherwise man would exist without any rational purpose. It is not the nature of the human spirit to be content with mere existence, except, perhaps, in its lowest form, where the animal predominates over the human. It is rather its nature to develop, to unfold itself, to manifest its possibilities, and in doing so it reveals and perfects its own personality.

But the development of individual personality can not take place by itself. It is possible only in and through a society of similar personalities, a society of *persons*. As a person in a society of persons the individual, in being conscious of his own end, as an end in itself, recognizes that every other individual is likewise an end in himself, and therefore an end to be realized. In this reciprocal recognition of similar natures, effort towards the realization of others becomes a part of the realization of self. Thus, though an end in himself, the individual does not exist solely for himself, but is at once his own end and a means to the ends of others. His development is conditioned by their development, as their development, in turn, is conditioned by his. The joint effort towards the realization of individual personality centers in the social nature of man and necessarily involves social relations. Only through the development of the social nature is the development of the individual nature made possible, as only by the co-ordination of the individual and social side of human nature can true personality exist.

The development of the social, and therefore also of the individual, nature of man takes place in manifold ways, but

more and more, with the progress of his development, through social relations that manifest themselves in social institutions, in whose complex phenomena we have what is called "society." To borrow Hegelian terminology, the human spirit in realizing itself objectifies itself in social institutions—in society. Such a society being a manifestation of, and so constituted by, persons is something more than a mere aggregate of individuals, a mere numerical *quantum*. It is the result of social forces, and aggregation is not socialization. The bond that transforms human aggregates into living societies is psychical. But at the same time that it is a uniting, it is also a differentiating force; thus, while giving unity to the social elements and to the social whole, it permits expression of the manifold human interests in social effort. It is, furthermore, purposive in character, uniting common interests to common ends, and so re-enforcing the recognition by self-conscious spirits of persons as *means* to the ends of others, as *ends* to themselves. To the extent that this common interest and recognition do not exist the self-seeking spirit of man tends to the disintegration of society; or to the assumption by a part of society that certain classes of individuals are only means to the ends of others, a practical denial of their existence as persons, as ends in themselves. The existence of such a negative force in society has far-reaching consequences, not only in matters of taxation but in the whole economic and social life; for to the failure to recognize individual personality as an end in itself are very largely due the antagonisms of social classes. Only in the complete recognition of the ethical nature and end of the human person can society fulfill its highest purpose, as expressing the objective realization of the individual—of personality; and the more this becomes a reality in life the more will justice between man and man be realized. And the more that society is recognized to be a society of persons the more will these ends be attained.

But if it is true that society is constituted of persons, and that without *persons* there is no *society*, it is not less true that without society there are no persons.¹ Persons and society are, in fact, correlative to each other. Each presupposes the other. In society personality and individuality unfold themselves; in society the human spirit seeks its realization. Without society the person has only potential capacity, while it is only in society, "only in the intercourse of men, each recognized by each as an end, not merely as a means, and thus as having reciprocal claims, that the capacity is actualized and that we really live as persons."² If the evolution of social relations, indeed, is but the gradual tracing out of the evolution of the human spirit, these relations, as they at any time exist, are the embodiment of all past, and condition all future, social development. But although society and the individual mutually presuppose each other the end of social evolution is not in society, *as such*, but in the realization of the individual, to which end society is a condition and a means. And in the character of society as a society of persons, and as a condition of their development, we have indicated the ethical character of all social institutions, and the necessity of ethical considerations in all social relations. Related as subjective to objective the development of one implies the development of the other. And as the development of the ethical life takes on the form of a change in extent rather than in the fundamental ideas,³ embracing an ever larger circle of persons in the consciousness of the unity of purpose and ends, so in social evolution there is an ever increasing multiplicity in the numbers and variety of social institutions, an ever growing organization of common interests and common ends, the complexity of the social relations being a reflex of the complex nature of the

¹ Green, *op. cit.*, p. 199.

² *Ibid.*, p. 192.

³ Cf. Green, p. 269.

individual, a means of his giving expression of himself—of his being a person.

The complexity of social relations is not a miscellaneous complexity. Every human interest, when it becomes sufficiently important and sufficiently general according to circumstances, is focussed in an organized body of persons with the purpose of giving realization to the common interest. Thus, out of social relations are formed social groups, whose totality constitutes society. These groups tend to embrace every human interest of social importance—intellectual, moral, religious. They divide and subdivide, ever increasing in numbers and variety with intellectual, moral and religious progress. In content these groups tend to become more specialized, in extent more generalized; a condition due to scientific progress, as in means of communication, on the one hand; and to a broader human fellowship, an enlarging consciousness of the unity of interests and ends, on the other hand. But the consciousness of a community of interests and ends that gives rise to social groupings is not a reflective consciousness of ultimate ends, except, perhaps, in certain religious groups. The determining consciousness is that of immediate interests and ends. Consciousness of ultimate ends has little direct influence upon social groupings. The ultimate end is revealed only by a reflective analysis of the philosophy of social life with reference to the life of the individual. Yet it is only in and through the almost countless number of these groups, ever increasing in numbers and variety, that the human spirit finds its fullest realization. And the "unity in complexity" of these groups is typical of the highest form of social evolution.¹

The tendency towards social organization, however, is not without its opposing influences. The presence of self-seeking spirits as the dominant factor in human life is a dis-

¹ Cf. Spencer, *Principles of Sociology*, Pt. v, chs. 2-4.

integrating social force and produces a retardation if not a negation of social organization. Social development is conditioned not only by the presence of positive social forces and favorable conditions, but by the absence of negative forces and conditions. Progressive realization of the human spirit is possible only where the conditions are favorable to its voluntary and spontaneous activity, both with respect to individual undertakings and with respect to associated effort such as is manifested in the social groups seeking a common purpose. That these positive and negative conditions should be maintained becomes, then, a matter of the first importance and of general interest. To this end a coercive power is a necessary requisite, and hence, in its maintenance and support there is a universal interest. Such a power is realized in the political organization of society, the state—the all-comprehensive social group representing the universal common interest. In this group is centralized both the objective and the subjective complexity of society, in it social life reaches its highest culmination.

II. ORIGIN OF THE STATE

With the actual historical origin or with the evolution of the state we have no concern. Being in search of principles our point of view is wholly that of a philosophy of the state, and is therefore an inquiry into its underlying principle and cause, of which the historical state is a manifestation, whatever may have been the course of its development. From this point of view the state's origin may be considered under two aspects, its objective necessity and its subjective necessity.

By objective necessity I understand the necessity, pointed out above, of a coercive power to give unity to society and to make possible the conditions of social, and thereby individual, development. For without such a dominating

social group society would at best be but an unorganized mass of social groups in perpetual and unrestrained conflict with anti-social forces, thus destroying the effectiveness of social organization and social effort in the work of the realization of man. The necessity, indeed, of this restraining and controlling power has been recognized, however unconsciously, from the very dawn of society, though its earliest manifestation was in other social groups, such as the family and religious groups. In the course of time the ever increasing manifoldness of interests, by a process of social evolution, gave rise to a differentiation of the groups, a distinct political group ultimately emerging with the specific function of maintaining the order and conditions necessary to the ends of individual and social life. Assuming the realization of the individual as the unrestrainable and impelling force, the necessity of the objective conditions may be considered as one of the unconscious forces that brought the state into being. In brief, its very indispensableness is the cause of its being. With human nature as it is the state can not be conceived not to be.

But the objective necessity is not the only cause of the state. Back of that and co-operating with it is a subjective necessity that springs from the nature of the individual. On the one hand it is the necessity of self-realization in the most effective manner; on the other hand, it springs from the social nature of man¹ that impels him to associative effort for individual ends of a common interest. In this respect the state does not differ from other social groups. These differ among themselves chiefly in content and immediate end, but also in the form of organization and government. Nor is the social nature that binds men together in societies a mere instinct such as prevails in animal societies. It is rather a partly conscious and partly unconscious

¹ Aristotle, *Politics*, i, 2.

recognition of common ends of immediate interest; and with the highest development, also, of ultimate ends. Philosophically the social nature of man as distinct from the social nature of the animal, has its reason, if not its spring, in the conscious or unconscious recognition of man as an end in himself and as a means to the end of others.

III. THE NATURE OF THE STATE

The real nature of the state is revealed on the one side in its origin and on the other side in its end. Its origin, nature and end are, in fact, but different ways of viewing the fundamental conception of the state as an indispensable instrument in human development. In determining its origin we have, therefore, determined in general its nature and end. But a more specific determination of its nature is necessary, and this may best be done by a more specific determination of its end, for, as Aristotle long ago pointed out, the nature of a thing is determined by its end.¹

What, then, is the end of the state? We must first of all distinguish between the end of the state and the functions of government. A government is only the agent of a state, an organization within the state for effecting its will—its purpose. A state is a body of people organized into a body politic to effect the purpose or ends of individuals. The functions of government, then, have reference to the organized will of the people; the end of the state to the end of the individual. We may, however, consider the end of the state as of a two-fold character: proximate and ultimate. Proximate with reference to the establishment of preliminary conditions; ultimate with reference to the final end. Accordingly Professor Burgess calls the proximate end the establishment of government and liberty;² but if we may

¹ Aristotle, *Politics* i, 2, 8.

² Burgess, *Political Science and Constitutional Law*, Vol. i, p. 86.

consider government as inseparable from the state, though distinct from it, the proximate end might be more justly considered as the guaranteeing of rights and justice between man and man,¹ the direct maintenance of them being a function of government. What the specific functions may be is a question that is determined at any time by the existing state of culture and civilization, by the prevailing conception of the relation of the state to the individual. But into this question we need not enter here.

The ultimate end of the state is the ultimate end of its units—of the individuals of which the state is composed. The state by itself can have no end that is ultimate, since ultimate ends pertain only to entities that are ends in themselves. The end is ultimate to the state only with reference to its supreme purpose—to the ultimate purpose of its existence—not with reference to itself. This purpose, and therefore the ultimate end of the state, is the completest realization of the individual—his capacities, his *personality*, the highest human development, the perfection of humanity.² Considered with reference to itself the ultimate end of the state is the maintenance of the conditions that are essential to the self-realization of the individual. The state is a means; man alone is the end.

In brief, a state represents the organized effort of a people to realize the fullest development of human personality; or it is the supreme conditioning instrument of that realization. And to be such a condition and instrument constitutes the real essence of the nature of the state. But all other human institutions are conditions as well as means to the development of the individual; and since their existence and utility are conditioned by the existence of the state, we may characterize the state as *the* condition of conditions that are

¹ Cf. Lilly, *First Principles in Politics*, p. 30.

² Cf. Burgess, *op. cit.*, p. 85, and Lilly, *op. cit.*, p. 51.

necessary for the realization of man. This supreme importance of the state to the individual makes it of universal interest, while the ethical character of its end, a consequence of the ethical character of its units, makes it an ethical institution. These characteristics of the state—the universal interest and the ethical character—may be called derivative characteristics of its nature. There are also other characteristics of the state that are essentially connected with the nature of the relation of the state to the individual. A definite conception of the most important of these is necessary to a clear understanding of the nature and principles of taxation. They are: The character of the relation of the individual to the state; the character of the state as an organization; and the character of the state as a supreme controlling power. We shall discuss these characteristics of the state briefly under the following heads: The voluntary and involuntary character of political organization; the organic theory of the state; the nature of sovereignty.

IV. CHARACTERISTICS OF THE STATE

1. *The Voluntary and Involuntary Character of Political Organisation.* We have thus far seen that the state is the supreme and most important of social institutions; that it originates on the one hand in the social side of human nature, and on the other hand in the effort of man to realize the possibilities of his nature; that its origin dates from the very dawn of social life; that in its development in form and organization it has gradually become differentiated from other social groups, assuming the special function of establishing the conditions that make their development, as well as all social evolution, possible, its ultimate purpose being the realization of human personality; that, finally, it is an ethical institution in which there is a universal interest. Its dominant feature is its conditioning character, but while this

feature is prominent in every field of social life it has perhaps its greatest significance in the economic life; not only because economic or industrial conditions are the best objective indication of progressive enlightenment and civilization, but because the economic life is in a sense the foundation of both individual and social life, and so also of the state itself. In such a social body, whose existence is so important to the individual that without it he could not exist as a person, what is the character of the membership? In other social groups membership is limited, and is determined by choice based upon an idea of the Good for the self but with limitations imposed by each social group for itself. Choice and permission are both essential; there is no compulsion either from within or from without, but only a subjective necessity. Is membership in the state of the same character? Membership in this or that particular state is determined by various influences, as language, custom, tradition, nationality; but with intellectual and economic enlightenment and growth in personal freedom, membership becomes more and more determined from choice, from an idea of a personal Good. But membership in *a* state is universal, there being no stateless persons in civilized society. It is also universally necessary, and this necessity is not only subjective but is also objective: subjective, because as we have seen, it is the inevitable expression of certain qualities in human nature; objective, because in civilized society there is no escape from membership in a state and subjection to its laws.

But is this membership voluntary and free, or involuntary and compulsory? Our answer must be that from different points of view it is both voluntary and compulsory. From the point of view of political science it is compulsory, but from the point of view of a philosophy of the state it is voluntary. Objectively considered, that is from the point of

view of empirical political science, the state is undoubtedly founded upon *force*; and membership in it, support for its maintenance and defense, is compulsory. Without the exercise of force, or the possibility of its exercise, no state could endure. Without it there would be only individual and factional strife, the "war of all against all," barbarism, undeveloped humanity. But important as is the element of force in a state, force viewed as the foundation of the state expresses but a half-truth. Considered from the point of view of subjective political philosophy, the only point of view that reveals the true relation of the individual to the state, the foundation of the state is *will*.¹ Or, if force is the foundation of the state, *will* is the foundation of force. In fact, the force which the state typifies is but the embodiment of the wills of its members, the objectified will of persons. Hence also membership in the state is both compulsory and voluntary. The state, as *force*, exacts support and obedience, but the state as the embodiment of will is created and maintained by the voluntary acts of free agents—of persons.

This dual character of the state and of membership in it, a little reflection will make evident. The element of force and compulsion is too self-evident and too admittedly necessary to need special justification; but that the force of the state can not be permanently effective, except as it is the expression of will, reflection must make equally clear. The fact, indeed, is well illustrated in the practical impossibility of enforcing unpopular laws—of laws out of harmony with the general public sentiment. The fact that the state is a people organized into a political society, originating in a common interest to achieve a common purpose and common end—based upon an idea of a Common Good²—is likewise the clearest evidence of the implication of will as its source,

¹ See Green, *Political Obligations*, pp. 121-141.

² *Ibid.*, p. 126.

and that there is not fundamentally any forced subjection to any external power. The purpose of realizing a common good can have no meaning except it be grounded upon consent; but consent is choice, choice is an act of will,¹ and will is based upon an idea of a Good. And, it may be added, in the *willing* of a common good, the pursuit of a common end, which implies a conscious presentation of the end to the subjects willing, is the final proof that the state is an ethical and not merely a natural institution.²

The real fact is that membership in a state—or the support and obedience which it implies—is a result of compulsion only in the case of this or that individual, where ignorance and selfishness has set up a personal good as opposed to the common good. Without such compulsory conformity to the idea of a common good, dissolution would set in and the state soon cease to be a state; but this compulsion becomes less and less a factor in the life of a state, while voluntary participation in and support of the state, becomes more general, the more enlightened a people becomes—the more it rises to the idea of a common humanity possessed with common interests and like ends. Upon the state as a whole, indeed, there can be no compulsion, since the state is itself a body of people organized for the maintenance of rights. Compulsion must be by the whole upon the individuals who contravene these rights. Compulsion is from without, and the state is not a body external to itself that can coerce itself. The people as a whole and individually will the enforcement of law for the maintenance of rights. Even the violator of law wills the enforcement of the law upon every member of society, and therefore upon himself. He merely takes his chances for a greater personal, temporary good for himself by evasion of it.

¹ Cf. Aristotle, *Nicomachean Ethics*, iii, 2, 1.

² Cf. Green, *Political Obligations*, p. 132.

In brief, the case is this: By virtue of a recognition of persons as ends in themselves there arises the idea of the *rights* of persons, and therefore also a common interest in the maintenance of these rights by the combined force of all. To this end the state is organized—to centralize the force of the whole upon the individual. For the realization of rights, therefore, two conditions are essential: a conception of persons as possessing rights because of their character as *persons*, and the collective enforcement of these rights. Or, as Green says, force co-operates “with those ideas without which rights could not exist.”¹

2. *The Organic Theory of the State.* What, now, is the character of the political organization in which the citizen freely participates for the realization of himself? Is the state a mere aggregate of individuals, a social organism, or an association of individuals psychically united by a common interest in common ends? An answer to this question will throw light upon the nature of the state and also upon certain principles of taxation, particularly respecting the basis of taxation and the exemption of the minimum of subsistence. Our own answer has practically been given in the preceding discussion, but we may re-enforce our argument by a brief consideration of the opposing theories.

The theory that the state is a mere aggregate of individuals need not detain us long, as there are few, outside of the anarchist or the extreme individualist, who would maintain so irrational a doctrine. Clearly, a *mere* aggregate of individuals cannot make a society, or a social group, any more than a *mere* sum of sensations can issue in knowledge. Society, like knowledge, implies unity in multiplicity, but such unity is possible only if there is a common principle that pervades the multiplicity—the individuals or sensations—

¹ Cf. Green, *Political Obligations*, p. 140.

and binds them together about a common idea, purpose or end. Without this uniting principle there can be no society.

But is the unity that makes society an organic unity? Is society—the state—an organism? Such has been the accepted doctrine of widely different schools of thought, as Spencer on the one side and German philosophers and economists on the other side. The theory of the social organism is to-day one of the most widely accepted doctrines respecting society or the state.¹ That there is a striking analogy between the structure of the state and an animal organism there can be no doubt; and that this analogy is helpful to a clearer understanding of the nature of the state must also be admitted. But it is a poor logic that argues from an analogy of structure to an identity of character or nature. Indeed, the analogy even with qualification is quite as harmful as helpful, since it is suggestive of an entirely erroneous conception of the relation of the individual to the state, and logically carried out would lead to strange conclusions in principles of taxation, as in political matters generally. Upon the whole I believe it to be in the interest of scientific truth, notwithstanding certain similarities, to abandon the analogy entirely, not only because of its misleading tendencies but because in its most important features the analogy is entirely false. Without attempting a detailed criticism I would mention three facts any one of which is sufficient to overthrow the doctrine that the state is a social organism. These are: 1. Differences in the character of the units; 2. differences in sentiency of organism and society. 3. differences in the end of the units and the whole.²

1. The units of an organism differ from those of a society

¹ It is interesting to note that there is a growing tendency among American authors to reject the organic theory of society, as notably, Giddings, Willoughby and Fairbanks.

² See Spencer, *Principles of Sociology*, Vol. I, pp. 478-9.

or state, in their discreteness, their mobility, their consciousness. (a) The units of an organism are concrete, material things physically united, though endowed also with the physical principle of life. The units that compose a state are materially discrete, though being essentially psychical in their nature are psychically united. (b) The physically united unit of the organism is immobile and performs a specific function in a specific portion of the organism. The psycho-physical unit of the state being discrete has great mobility, and performs various functions in various portions of the body politic. (c) Not only is the social unit endowed with mobility, but it has also consciousness, indeed, self-consciousness. It has, thus, the capacity of the self-direction of its movements and activities in the pursuit of various purposes that it sets before itself as desirable to attain. Hence its ability to attach itself to this or that society—"social organism"—or to perform functions not only in the various groups—"organs"—of the same society, but also at one and the same time in different societies or states. In no sense does such consciousness and such self-direction exist in the unit or cell of an organism. There is, in brief, all the difference between a *thing* and a *person*.

2. Again, in the animal organism there is a common sensorium for the whole organism which is the center of its sentient and psychical existence. No such sensorium exists for the state, since it exists only in corporeal substance and the state is not such an entity. It has no sentiency or psychical life apart from that manifested in its unitary parts, while in the organism there is no sentiency or psychical life apart from that manifested in the whole. It does not exist in the units or cells. So far as there is any comparison, indeed, it is between the organism as a whole and the units that make up a state. But since these units are in reality the organism with which the comparison would be made, we

should have only what the logicians call an identical proposition.

3. But perhaps the most decisive difference between an organism and the state is in the ends of the units and of the whole. In the organism the cells—units—are merely contributory parts in the life of the whole and exist only for the sake of the whole. They have no end of their own and no function apart from the specific organism to which they belong, and apart from it also no reality. The units of the "social organism," on the other hand, do not exist for the whole, but the whole exists for them, for their development. They are ends in themselves, have functions of their own to perform as well as those for the whole, and have a reality of their own. But the organism, as such, has its end in its own existence, while the state has its end in the highest existence of its members—its constituent parts. In the state the whole has its existence in and for the parts; in the organism the parts exist in and for the whole.

These objections, to which others might be added, are a sufficient refutation of the widely-accepted doctrine of a social organism. But if the organic theory of society is false, so also is the extreme individualistic conception of society. If the state is not an organism for which the individual exists, it is nevertheless true, as we have seen, that it is only in the state that the individual has his highest and most complete existence. The only true theory lies between the two extremes, and sees the mutual dependence of the state and the individual, never forgetting, however, that the ultimate factor of permanent importance is the individual, for whose end all else is at bottom subordinate.

Important conclusions follow. For if the view that we have held is the true one, it follows that the individual must contribute to the support and maintenance of the state, but that in doing so his own personality, and therefore ethical

considerations, should ever be kept in the foreground. But on the theory of a social organism contributions to the state should be determined rather by principles of expediency than by ethical principles, since the ends of the individual would be of no concern, as they would have existence only for the "organism." On the basis of an extreme individualism there would be no contributions to the state, or if so, only voluntary ones.

3. *The Nature of Sovereignty.* We are not concerned with all of the characteristics of sovereignty, but only with such characteristics as have any importance in the determination of principles of taxation. We shall, therefore, consider sovereignty only with respect to its dual nature and the characteristics of each, and with respect to the rights of individuals.

1. By common consent the chief attribute of sovereignty is supreme, coercive power over the lives and property of individuals, or associations of individuals, that are members of a state; a feature that is common to no other social group. But sovereignty is something more than supreme power—force; but to understand its twofold character it is necessary to keep in mind the distinction between state and government so clearly and forcibly made by Professor Burgess.¹ A state is a body of people organized as a body politic; a government, as we have seen, is the agent of the state, the instrument for effecting its will. It is in the government that is manifested the direct exercise of sovereignty, but the source of this power is in the people back of the government. It is the former that the statesman or lawyer ordinarily has in mind, but to the political philosopher the latter is of chief importance. The former—the sovereignty of government—we may, with Professor Ritchie,² call *legal*

¹ Burgess, *Political Science and Constitutional Law*, Vol. i, p. 57.

² Ritchie, *Principles of State Interference*, Appendix, note B.

sovereignty; the latter—the sovereignty of the people—*ultimate* sovereignty. More definitely, ultimate sovereignty is the organized will of a people respecting life and property, liberty and justice, or the conditions of human development. Legal sovereignty, on the other hand, is the immediate exercise of supreme power in accordance with the general will of the people.

This double aspect of sovereignty may also be characterized as the sovereignty of *force* and the sovereignty of *will*, or objective sovereignty and subjective sovereignty, a view which follows from our conclusions concerning the nature of the state. The force of the state, or its supreme power, and the will of the state are but two aspects of the same thing and mutually supplement each other. For will implies a conscious activity directed towards a definite end, and without such activity is only a mere subjective *wish*. So also sovereign force of a people, as distinct from mere force, implies intelligent direction; or we may say that such force is intelligently directed will, but with supreme power for the execution of its ends. That is, the intelligently directed force and the will, necessarily in one and the same persons, are, as we have said, obverse sides of the same fundamental fact—*will*, or the activity of will. Hence, the sovereign power of the state is the activity, or expression, of the sovereign will of the people of the state, and are related as effect to cause. The primary, subjective fact is will; the immediate, objective fact is force, power.

If we consider sovereignty with respect to its sanction, or to the extent of its power, we meet with the same primacy of will. For it must be clear that the sanction for the exercise of supreme power by a state, apparently in the fact of the power itself, is in reality in the sovereign will. To be otherwise sovereignty would be no more than brute force. Objectively viewed, indeed, the sanction is in the fact of the

possession of supreme power, but without the originating and directing will there would be no such power, nor does the power extend beyond the range of the organized will of the people, the sovereign will of the state. But for the sovereign will there can be no sanction outside of itself, for will is a fundamental fact so far as our purpose is concerned, since we have not to do with the metaphysics that traces it to the *supreme* will imminent in the human will.

So likewise with respect to its extent. Sovereignty, indeed, as an objective fact is, by its very definition, unlimited in the degree and range of its power, since there can be no other power within a state to which it may be subordinate. But since sovereignty is also objectified will it is conditioned by the range of the activity of that will. Thus, again, will is the ultimate fact. The extent, or perhaps better the content, of sovereignty is determined, therefore, by the character of the will which it represents; that is, by the character of the wills of the persons in whom the sovereign will is embodied. Therefore, though in a sense will is a law unto itself, sovereign will is, by the very nature of the individual and the nature and purpose of the state, an ethically determined will; for, as we have seen, it is organized will directed towards the good of every person represented in it.

2. Is there, then, any limitation to sovereignty, or, are there rights of the individual as against the sovereign power? Politically, it must be admitted, sovereignty is absolute over life and property. Under no other condition can a state endure. The right of the state to exercise compulsion upon the individual has been sufficiently discussed in discussing the character of membership in the state, where it was shown that forced obedience is justified as against the individual who sets his selfish will in opposition to the general will, as in the violation of law, the non-payment of taxes; though

philosophically there is much truth in the contention of Hegel that the criminal wills his own punishment, wills, that is, the direction of the force of the state against himself.

But are there no limits to this power of the state over the individual? Only a moral limit. And hence the only rights of the individual against the state are moral rights. Politically, that is legally, the sovereignty of the state is absolute; but in virtue of its own ethical character, as well as the ethical character of the individuals in whom, upon whom and for whom it is exercised, it is subject to moral limitations. Or, there are rights of the individual that the sovereign power of the state is morally bound to respect, rights that flow from the very law of his being. They are in a very true sense "natural rights." They do not depend upon the state for their existence as *rights*, but only for a more assured reality. As Green puts it: "The state, or the sovereign [he means the government] as the characteristic institution of the state, does not create rights, but gives a fuller reality to rights already existing."¹ Not all "natural" rights are made legal rights, but only such as are of universal interest; and legal rights that are not "natural" or *moral* rights are not permanently enforceable, since they are antagonistic to the general will, to the prevailing idea of *right*.

The ridicule so commonly heaped upon the doctrine of "natural rights" loses its force if the distinctions we have made between sovereign force and sovereign will be insisted upon; and only by such distinctions is it possible to arrive at a true philosophy of taxation. The plea for justice in taxation, implied if not expressed in almost every theory of taxation, is proof of the general conviction that there are "natural rights" of the individual which the state does not create but should enforce; that the sovereign power of the state *ought* to be governed by definite conceptions of these

¹ *Political Obligations*, p. 138.

rights, by ideas of justice; that the state—individuals in association—no less than the individual, should be ethically determined. No other conclusion is possible from the conception of the state upheld in this chapter, which conceives it to be the purpose of the state to enforce right and justice to the end of the highest realization of the individual. The right to develop, to realize himself, is fundamental to every individual, and this implies a right to the means necessary to attain the end, but with a recognition of the equal rights of others. These rights of the individual necessarily involve obligation on the part of the state, whose very essence it is to provide these conditions, to make possible this development. It is by virtue of these facts—this conception of the state—that ethical principles in taxation are demanded; and it is in accordance with them that ethical principles must be determined.

Our conception of the nature of rights of the individual, and of the corresponding obligations of the state, may perhaps be made clearer by an illustration. Take, for example, the question of property rights. The right to property, it is usually assumed, is a purely legal creation, property being a question of law and not of right. From the legal point of view this is entirely correct; but the statement expresses only a half-truth. Property, that which is *one's own*, is also an economic good, produced directly or indirectly by individual exertion for the satisfaction of human needs, by which the self is realized. Such economic "good," therefore, belongs of right—a moral, "natural" right—to the individual as his own, his property, because it is the objective expression of his effort to provide the material means, not only of life but for individual, human advancement. Or, to borrow, again, Hegelian terminology, property is the outward manifestation of one's self; is, in a sense, the objectified self. Property as a legal right is only a confirmation by the government of an already existing moral right.

The moral, or "natural," right to property the state is bound to respect in its demands upon the individual, as it respects the right to individual development. And, in fact, this right to private property in the product of one's own labor has been recognized from the very beginning of economic life. The case is quite different with land, which as a common inheritance was first held in common and only later, partly as a matter of expediency and partly from a general recognition of the right to the improvements made upon the land, was made private property. As Locke puts it, whenever one's own labor, which is his own, is added to a natural object "the common right of other men" is excluded.¹ To this right to the products of one's own labor the government gives a legal existence.

If there is only a legal right to property, if property has only legal existence created by the sovereign power of the state, or by the government acting for it, there can be no question of the rights of the individual to any economic goods which the state may demand, or of the obligations of the state respecting them. Expediency, not justice, would supply the norm for taxation. But if property, that is economic goods, belong of right to the producer of them, as representing his effort and sacrifice to realize the possibilities of his nature, then this right should be recognized as fundamental in the determination of principles of taxation. Expediency must give place to justice.

The preceding theory of the nature of the state and the individual, involving reciprocal rights and obligations, will be assumed as the basis of the following discussion of just principles of taxation. The marked feature of this theory is the emphasis that it gives, at least by implication, to the idea that the problem of taxation is an ethical one: that in taxation as in other matters the good of the individual is the

¹ Locke, *Civil Government*, ch. v, sec. 27.

fact of fundamental importance, the ultimate object towards which the operations of the state must tend; that, in fine, the view-point of the problem of taxation, as of all social phenomena, is *man*. There will, however, be no attempt to make this theory the basis of new and startling conclusions. The object of this study is rather, upon the basis of a theory of the state that, it is believed, best explains its philosophy, to ascertain the true philosophy of taxation; upon this basis to discover, by analysis and criticism of existing theories, the true principles of taxation; and above all to give them a rational justification, and not, as is commonly done, merely assume the justice of certain principles without full consideration of all that is implied in the mutual relations of the state and the individual.

CHAPTER III

TAXATION, ECONOMICS AND ETHICS

I. TAXATION

1. *The Nature of a Tax.* In the preceding chapter we have learned that the state is an organization of persons effected for the realization of a common end, a common "good"—a good that is "common" because it is the good of every member of the state; that this "good" is from one point of view the attainment of right and justice, while ultimately it is the fullest realization of the personalities of the individuals who in their organized totality constitute the state; that primarily necessary for carrying out the ends of the state is the establishment of government—an organization within the state—charged with the general purpose of acting as the executive agent of the collective will of the state.

Thus we find that a government, as the agent of the state in the realization of right and justice and in the maintenance of conditions for the highest possible human development, is a fundamental collective need indispensable to every individual, to every *person*. Now such a government is not a mere subjective idea; it is also an objective fact, consisting as it does of a body of persons selected for the performance of its functions, for executing the will of the people—the state. But that these persons may perform the functions of government, certain material conditions, or means, are necessary. Hence the need of a government, and so the needs of government, involve two classes of needs: personal service

and material goods. But since the persons who act as the government retain their individuality—therefore their personal wants satisfied by means of economic goods—demand for their services resolves itself into a demand for economic goods, or the means for their procurement. Thus, directly or indirectly, the whole needs of a government may be summed up in the need for economic goods; on the one hand, food, clothing, shelter, etc., for the governing class; and on the other hand, land, buildings and such equipment as is necessary to provide place and material for the performance of the service, for the preservation of records, etc., and armament, ships and other essentials for national defense, both of which conditions are essential for the maintenance of government. Immediately and directly, however, the need of government is revenue—money—by means of which it can procure both service and the material goods necessary for the performance of its functions.

In the past the services and material goods required by a government have been procured in a variety of ways: By tributes and booty, by feudal services, grants, aids, etc.; by the cultivation of crown lands, and by direct service to the state—as military duty and the *corvée*; and latterly, indirectly by means of revenue collected in the form of money from the citizens of the state in which the government in question exercises its functions.¹ In earlier times tributes and booty constituted the principal source of revenue, in medieval times feudal dues and crown lands were the most important source, but in the modern civilized state the chief source of revenue is taxation—money contributions from the whole people—though fees, fines and, in some countries, government lands and industries yield a not unimportant part of the total revenue. We are concerned, however, neither with the history of governmental revenue, nor with

¹ See Wagner, *Finanzwissenschaft*, ii, sec. 103 *et seq.*

a study of the principles underlying the various kinds of revenue, but solely with the principles that should determine the collection of that revenue which comes from taxation.

What, in brief, is the nature of the tax, whose principles we seek to determine? Numerous definitions of a tax have been given, though not with complete success, since too great precision is attempted in a single sentence. For our purpose, at least, it is better to state the fundamental idea of a tax and afterwards to note its leading characteristics. Otherwise there will be inaccuracy of statement, or the need of too many qualifications. I would, therefore, define a tax as a contribution from individuals out of their private property for the maintenance and defense of government, to the end that it may perform its functions and the ends of the state be realized. The fact that contributions from private property are necessary for the support and expenses of government results, in part, from the change from collective to private economy, and in part, also, from the gift or sale of crown, or national property, to individuals as private property; in a word, to the fact of private property. And so long as the system of private property subsists individuals must contribute from their property for the support of government. But whether the individual is a member of the state to whose government he contributes is a matter of no importance. The fact is that contributions are due from all (with exceptions to be noted later) over whom a government may directly exercise jurisdiction, as with respect to their property, or for whom any of its functions may be directly performed, as for the defense of their persons or property.

In viewing the tax as a 'contribution' we have regarded it solely from the point of view of the individual, and we believe that this point of view is justified by a true philos-

ophy of the state as emphasizing the most distinctive feature of a tax, philosophically considered. But it must be admitted that there is another aspect to a tax, the point of view of the government. And from this point of view the tax may be considered as a method of procuring a revenue to meet the expenses of the government by means of collections from the private property, or income, of individuals. From the point of view of the individual, therefore, a tax is a 'contribution,' from the point of view of the government, a 'collection.'

2. *Characteristics of a Tax.* The tax regarded as a 'contribution' or as a 'collection,' or as both, does not reveal its full nature, but only its general feature. Particularly important to a clearer understanding of the nature of a tax are two characteristics that are in part suggested by its general feature as described above. (1) First, the question whether a tax is a tax upon persons or property; (2) Second, whether the tax is voluntary or compulsory. Both questions are of importance, not only because their answers will throw light upon the nature of the tax, but because important principles of taxation depend upon their determination.

(1) In the first place, then, is a tax imposed upon persons or upon property? That a tax is nominally levied upon property no one will question. But is the tax in reality, in its *essence*, a tax upon property? Economically speaking, or viewed as an objective phenomenon, a tax is undoubtedly upon property. A government requires economic goods in the form of a money revenue to defray its expenses in the performance of its functions; and this revenue is obtained by a collection made upon the private property of individuals. Government, in brief, requires property and procures it by assessments upon property and collections of property. But this view of a tax explains only its external and mechanical character, its *formal* character.

But as the nature of things in general, so also the nature of a tax is not determined by its formal character, but by its subjective idea, its subjective character. And the subjective character of a tax is not determined by the formal relation of a government to economic goods, but by the relation of a state to the persons in whom and for whom it has its existence. For, as we have seen, a state consists of *persons* organized as a body politic and has for its purpose their gradual development and perfection. State and persons are interdependent and correlative to each other. Consisting of persons, the state has direct relation only to persons and dependence upon persons. Government being the agent of the state, it is a necessary incident to it, and hence its maintenance and support is a requisite to the maintenance and support of the state. And as the agent of the state the dependence of the government for support is necessarily the same as that of the state, that is, upon persons. The relation, we repeat, is to persons and the dependence upon persons. This is involved in the very idea of the state. Moreover, as the state, and so the government, exists for persons and is a necessity to persons, the obligation of support must rest upon persons, as the necessity of support is a necessity to persons. Neither necessity nor obligation could rest upon property as such, though property is essential to state and government. The tax is and can be nothing else than a tax upon persons, at least upon our assumption of the true conception of the state. Nor, indeed, is the subjectivity of the tax, as a tax upon persons, any less apparent when viewed from its economic standpoint if only the subjective character of property be considered. For, subjectively considered, property is, as we saw, the objectified self; and hence a tax upon property becomes indirectly a tax upon persons, upon personal productive capacity and ability, upon the economic means of satisfying personal wants, and thus upon the entire personality of the taxpayer.

Thus, whether we consider the tax with respect to its necessity to the individual and to the corresponding individual responsibility and obligation (involving the relation of the individual to the state), or with respect to its economic relation to the individual, it is equally evident that, while empirically and objectively viewed, a tax is upon property, ideally and subjectively viewed it is upon persons. And it may be added that this subjective character of the tax has far-reaching results. It supplies the key not only to the true philosophy of taxation but to the principles by which it should be governed. It also furnishes the key to the solution of many otherwise difficult problems in taxation, and consistently adhered to avoids much error and confusion of ideas. "The subjectivity of the tax," says Vocke, "is the Ariadne thread that must be firmly held if one would avoid a multitude of dangerous mistakes and escape from the labyrinth of obscure (unklar), if also old views."¹

(2) Granting that a tax is a tax upon the person, is the tax contribution voluntary or compulsory? Again, it is necessary to distinguish between the objective and the subjective character of the tax, between the objective fact and the subjective idea. As objectively considered from the view-point of political science, or of the government, the payment of taxes is necessarily compulsory. Compulsion, in fact, is a necessary prerogative of objective sovereignty, and a necessary consequence of the right of the state to be. So dominant, indeed, is this aspect of the tax that the idea of compulsion has become a central feature in all of the definitions of a tax by both the legist and the economist, the statesman and the financier. Yet, historically, the beginnings of the tax, as occasional "aids," "grants" and "donations," were entirely voluntary; and only gradually, with the change of society from *status* to *contract*, and the

¹ Vocke, *Die Abgaben, Auflagen und die Steuer*, p. 472.

growing insufficiency of other sources of revenue, did these contributions become regular and compulsory.¹ And curiously enough, as the consciousness of the unity and universality of interest in a stable government has developed, and particularly with the rise of the democratic state, the compulsory character of tax contributions has become more universal and more rigid.

But the compulsory feature of the tax represents only one side of the question, either historically or philosophically. For, correlated with the fact of an enlarged range, and the rigidity of compulsion, is the further fact that with the growth of a more definite consciousness of our citizenship, and of the vital relations that we sustain to the state and the state to us, there develops the conviction of an obligation to contribute towards the support of the government, and at the same time the right of the government to exact the contribution.² And, indeed, this conviction attests the voluntary character of the tax, at least where its true nature has been duly reflected upon. Nor is the voluntary character of the tax a mere subjective concept arising from conscious reflection upon the nature of a tax. Taxes are in fact voluntarily paid, even though the attempt is almost universally made to evade a part of them, or a protest is made against their amount. At least in all cases of pure democracy, or of representative governments elected by the people, the people voluntarily agree, directly or indirectly, to tax themselves. As was pointed out when discussing the character of membership in a state, the people who voluntarily make up a state voluntarily agree to tax themselves for its support and maintenance; and only here and there the self-seeking individual endeavors to make himself an exception to the general rule, and upon such it is agreed, individually and

¹ See Seligman, *Essays in Taxation*, pp. 1-7.

² Cf. Cohn, *The Science of Finance*, sec. 192.

collectively, that compulsion shall be applied, the voluntary and compulsory character of a tax thus implying each other.

But not only is the idea of voluntary taxation implied in the voluntary character of membership in a state, it is a necessary consequence of the subjective idea of the tax and of the state. If, as we have maintained, the fundamental basis of the state is will, then the same will that creates the state must will to provide the means for its maintenance; that is, contribution for the support of the state is a voluntary act. Any other theory can rest only upon the pre-supposition that arbitrary force is the sole foundation of the state, thus failing to distinguish between the empirical state and the Concept state.

Nevertheless, the subjective idea of taxation does not exclude the idea of compulsion. On the contrary, compulsion, we repeat, is in the voluntary conception of the tax; a fact that must become apparent the moment that we reflect upon the distinction between the general will and the individual self-seeking will, between the social will of the individual and his purely personal will, if we may be allowed the distinction. In any case, however, only the subjective idea of the state and the subjective idea of taxation can furnish a basis for ethical principles of taxation, for if force is the sole factor in the problem there can be no question of principles, but only of policy; still less a question of ethical principles. But, in fact, even the objective right of compulsion, as in the enforcement of the law of universality, rests upon the subjective idea, or, perhaps better, the subjective fact.

3. *The Limits of Taxation.* Granting the power of the state to impose taxes as a sovereign right—a right, however, that has its source in the general will—are there any limits to the taxing power? If the question be made to refer to the state proper it must be said that no theoretical limits to

taxation can be assigned; for if the state is the people organized, and represents their collective will, there can be no limit to its power other than that which it determines for itself, that is, which is determined by the general will in view of common ideals. But in view of the fact that the government, as the agent of the state, is the practical taxing power, it is with reference to the government that the question has its real significance.

In discussing, then, the limits of the power of the government in taxation we shall pass over all specific reference to the individual, since this phase of the question constitutes the essence of the main burden of our thesis. Here we wish only to note a few general observations, particularly respecting the amount of the tax burden. And in the first place, it may be observed that the limits are relative, not absolute; and that while no *a priori* rule can be given for the limitation, there are, nevertheless, both theoretical and practical limitations. In a general way we may classify the limitations under the following heads: political, ethical, economic.

(1) Politically speaking the power of a government in taxation is theoretically limited by its creator, the state; and most commonly the limit finds objective expression as a constitutional limitation, especially under constitutional governments. That is, the will of the people is the final judge. More than this, in all representative governments the people theoretically exercise a direct control over the amount of the tax in the choice of their representatives. Unfortunately, however, owing to party machinery and political methods, the control of the people is very largely theoretical only. Where, indeed, the government falls into the hands of a "political aristocracy"—the politicians—the people retain only the semblance of power, while the government becomes practically absolute.

And yet there are practical limitations, for if the burden

becomes too oppressive there is always danger of a revolution, such, for example as the Revolution of 1789; unless, perchance, the oppression successfully passes a point where resistance becomes hopeless, as is apparently the present condition of Italy and Spain. In countries of greater enlightenment and a larger freedom there is the restraint that the fear of being deprived of office, through the ballot, constantly exercises. Such a limit is, however, very indefinite. It depends in part on the ability of the governing power to throw the burden on those who have practically the least political power; in part on the ability to use the more or less deceptive method of creating public debts.¹ Thus, politically a government has in practice a wide range of discretion in the use of its taxing power, even the constitutional restraint being very largely negated in the fact that the government interprets the constitutional limitations put upon it.

(2) But though a government has a large range in taxation politically, there are certain ethical limitations that are incumbent upon it, for the government is, after all, constituted of moral agents. Still, no definite moral rule of limitation can be assigned. All that can be said is, that since the government is the agent of the state in making conditions possible for the highest human development, it is morally bound to consider the effects of any taxation in retarding this development. But such a limit is relative. It depends, on the one side, on the functions that are assigned to the government, and, on the other side, on the national wealth, on the economic condition of the people. But the functions of government are themselves relative²—relative,

¹ Cf. Adams, *Public Debts*, ch. ii and pp. 41-2.

² The theory of the relativity of the functions of government was warmly criticised by the Hegelian scholar, Dr. W. T. Harris, in a discussion following a paper by the writer on "The Functions of Government."

that is, to the habits and customs of a people, to their ideals, their intellectual and moral status, their industrial life, their political and economic freedom. The main ethical problem of a government in taxation, however, is the just distribution of the burden, a question we need not discuss here.

(3) Economically, also, the limitations of taxation have the same relative character that they have ethically, the same indefiniteness, the same want of definite rule.¹ Neither a fixed percentage of the national wealth, nor a *per capita* average can furnish valid criteria for judgment. Hardly more satisfactory is the rule that would limit the amount of the tax upon the individual to a fixed proportion of his revenue.² No less indefinite is the rule that the amount of taxes should be determined by the needs of the government, for not only are these needs relative to the functions of the government, but their satisfaction is conditioned by the national wealth and general economic circumstances. Of far greater importance, since it conforms both to the ethical ideal and to sound economic policy, is the rule of Stein, sanctioned by Professor Adams,³ that the amount of the tax should be so adjusted as to maintain a due proportion between the satisfaction of the needs of the state and the needs of the individual. True, the difficulty of this rule is the practical determination of a "due proportion," a problem that is very largely influenced by economic and ethical conditions. The solution of the problem, however, is made theoretically simple by the utilitarian economists by an application of the doctrine of marginal utility. But for reasons that will be given later, utilitarian economics has, to my mind, a very limited application in public finance, being subject to the delusions

¹ Cf. Wagner, *op. cit.*, secs. 104-106. Cf. also Adams, *Public Finance*, pp. 26-33.

² See Vauban, *La Dime Royale*.

³ Adams, *The Science of Finance*, p. 28.

that are so common in reasoning from analogies. Still, the rule is economically and ethically sound as a rule for guidance. But, perhaps, the most practical economic rule is that taxes should not be so large as in any way to impair their source. That is, the economic limitation is determined by the effects of taxes upon industries, and so upon the sources of revenue. This phase of the question we will discuss under the following head.

II. TAXATION AND ECONOMICS

The economic life of a people is intimately related to its social life, not only because it is itself a phase of the social life, but also because economic goods form the material basis of the existence and usefulness of all social groups,—religious, philanthropic, scientific, etc.,—as well as of the political group itself. That is, social well-being is conditioned by economic well-being. Whatever, therefore, affects the economic life, or the economic conditions of a people, affects also its social and so its individual well-being. Hence it becomes of grave importance that a government in exercising its power of taxation, in collecting economic goods from individuals, should carefully observe any economic effects that taxes may have, whether due to the methods of taxation, the amount of the taxes, or to other causes.

These effects we cannot stop to discuss in any detail, but must confine ourselves to pointing out some of their more important features and tendencies, not only to indicate the character of the problem involved, but also to emphasize the fact that justice in taxation cannot be realized except by due observance of economic laws and principles. For while this aspect of the question is essentially one of the economics of taxation, rather than of the principles of taxation, a clear understanding of the character of the effects of a tax is an indispensable prerequisite to the determination of principles;

since the justification of principles must be found in the effects resulting from their practical application, not in *a priori* formulae. Indeed, it is because of the influence that taxation has upon the production, distribution and consumption of wealth that it is of special economic and ethical importance to consider its effects, since these have an important bearing upon principles of taxation, as no system can be just which unduly and unequally affects the opportunities, or material means of development. In the economic effects of a tax, therefore, and more particularly in the effects upon consumption, is to be found an important factor in determining the justice of principles of taxation.

1. *Taxation and Production.* The question specially involved here is not that of taxes as an element in the cost of production. It goes, indeed, without saying that taxes must constitute an essential element in the cost of production so long as government shall be necessary to guarantee the protection, security and order that make production possible, and so long as taxes shall be necessary for the support of government. More strictly, taxes are a preliminary expense that make the conditions of production possible; but they are none the less a necessary part of the cost. Nor, again, is the question one of the possible use of taxes to further production by the government, as, for example, by the purchase of railroads or other industries. This is a question of policy and of the functions of government as well as an economic question, and is too large a subject to be considered here. No, the question with which we are concerned, is the effect of taxes upon the production of individuals, and thus upon economic progress and the general material well-being of the individual and of society.

Do, then, taxes encourage or discourage production? To this question different answers have been given. On the one side there is the doctrine that taxes necessarily stimulate

production, a theory successfully overthrown by Hume.¹ McCulloch accepts the reasoning of Hume but qualifies his acceptance with the statement that, "it is undoubtedly true that the desire to maintain and improve their condition, stimulates most men to endeavor to discharge the burden of additional taxes by increased industry and economy, without allowing them to encroach on their means of subsistence, or on their fortunes."² On the other hand, J. B. Say, who viewed the problem from a different aspect, thought it "a glaring absurdity to pretend that taxation contributes to the national wealth," since "capital is but an accumulation of the very products that taxation takes from the subject;"³ that is, since the source of a tax and of capital is one and the same, and to increase the one is to diminish the other.

The fact of the case, however, is that general positive statements can not be safely made on either side of the question. The effects of taxation on production are relative to a great variety of circumstances and conditions, and these a government should, as far as possible, take into account in its tax systems and methods. What the effects of a tax upon production are, depends, in fact, very largely upon the laws of shifting and incidence in taxation. But these laws are by no means simple in character; they depend upon many conditioning influences, and are specific rather than general in their nature. We cannot, however, stop to discuss this aspect of the question further than to call attention to the evident fact that the effect of a tax, and therefore its

¹ See Hume, *Essay on Taxes*.

² McCulloch, *Taxation and Funding*, p. 7 (ed. 1852). For similar views of Petty and Temple see Seligman, *Shifting and Incidence*, p. 16. Cf. also Bear, *L'Avere e l'Imposte*, p. 126. Also Mill, *Polit. Econ.*, sec. 3, bk. v, ch. iii.

³ Say, *Political Economy*, bk. iii, ch. viii, sec. 1. For conditions in which the tax may lower or raise the "marginal cost," or influence the rate of remuneration, see Edgeworth, *The Pure Theory of Taxation*, in *Economic Journal*, Vol. vii, p. 57.

incidence, is indissolubly linked with the problem of justice; and also to point out some of the more important conditions determining the shifting and incidence of taxation. That is to say, the justice of a tax is largely conditioned by its effects, the effects are intimately connected with its incidence, and the incidence, as we have said, is determined by various conditions.

Among the more important of such conditions are the following: Whether the industries taxed follow the law of constant, increasing or decreasing returns; whether or not they are monopolies; whether or not there is mobility of capital and labor; whether the tax is based upon value or is a tax upon *surplus*; whether the demand for the taxed commodity is elastic or inelastic; whether or not the "law of substitution" is possible; whether the tax is high or low; whether special or general; the condition of the market for labor and capital; the economic condition of the industry taxed relatively to other industries; the form of the imposition and the kind of taxes, as, for example, whether the tax is direct or indirect; and the kind of industry taxed and the stage of the industrial process in which the industry is taxed. In brief, whatever conditions, arising from taxation, that have an influence upon price determine the manner and degree of shifting and incidence, since these are essentially phenomena of price, the objective determination of which is the law of demand and supply, the subjective determination the law of marginal utility.¹

¹ For the best statement of the history and theory of shifting and incidence, see Seligman, *Shifting and Incidence of Taxation*. See also Kaizl, *Die Lehre von der Ueberwälzung der Steuern*. For a theoretical study of the first four "conditions" mentioned in the text see the able article of Prof. Edgeworth on "The Pure Theory of Taxation," *Economic Journal*, Vol. vii. These conditions are not treated by Prof. Edgeworth singly but in groups of assumed combinations. He takes into consideration also the effects of "short" and "long periods," and whether the tax is on *rival* or *complementary* industries. The article is a splendid illustration of both the complexity and the difficulty of the problem of "shifting and incidence."

It is the influences of such individual or combined conditions as the above that help to determine the operation of a tax, and without a clear understanding of these influences it is impossible to determine the effect of a tax upon production. And yet they tell us but one side of the problem. By studying the effect of these influences we may learn the effect of a tax upon price and upon the demand and supply for the products taxed, but not necessarily the effect of a tax upon production. The question of the effect of a tax upon production is primarily and immediately a question of its effect upon the accumulation and employment of capital, and upon the zeal and industry of labor. An important element in the solution of this problem is undoubtedly the influence of demand and supply operating through price, itself largely determined by the above-mentioned conditions. But this is not the only element of the problem. It is necessary to know, not only the effect of a tax upon price and demand, but also the effect of a tax-determined price upon the profits of capital and labor. Nor even then can we say with any definiteness what effect these combined influences will have upon production. Positive statements concerning the effects can result only from an incomplete apprehension of the facts involved.

Let us take, for example, the assumption of Say, that taxes always tend to diminish production for the reason that what is spent as a tax would otherwise have been consumed as capital; or the opposite theory, that a tax tends to stimulate productive activity, or to "create the ability to bear it," on the ground that the desire to maintain a certain standard of living stimulates to greater industry and labor whenever a tax curtails the means of maintaining the desired standard. The fact is that both assumptions are only partial truths. In both also there is a *non sequitur*. Not only is it clearly not a fact that what is spent as a tax would otherwise have been

employed as capital, but it by no means follows that, because both the tax and capital have the same source, to increase the one is to diminish the other, since all other expenditures have the same source. How that part of the income which is consumed as taxes would have been spent but for the tax depends in part, indeed, upon the possibility of profits, but also in part upon the character and habits of the individual taxpayer. And in like manner is determined whether a tax effects a greater utility of industry and labor. Influences are at work in both directions and the final effect is a resultant of many opposing forces. But whatever the general tendencies, there can be no doubt but that an excessive tax curtails production, while a moderate tax may, at least under certain circumstances, afford a stimulus to greater production or to larger accumulations of capital.¹

It is, indeed, in the fact that taxes may work both ways upon both capital and labor, may even have one effect upon one class of producers and the opposite effect upon another class, that makes it of such importance that a government, in the determination of the amount and adjustment of taxes, should carefully consider their possible effects, and so the conditions under which those effects are likely to be produced. Nor is this importance confined to the immediate effect of taxes upon production. It is shown as well in the logical results of our assumptions. To assume, for example, that taxes always encourage production is not only to assume a fallacious doctrine, but also a dangerous principle, since there would be no logical limit to the extent of taxation; while the assumption that taxes always lessen production, besides being false, tends to exaggerate the rights of the individual as against the state and to cripple the necessary needs of the government. The possible indirect effects upon

¹ Cf. Marshall, *Principles of Economics*, p. 288 (2d ed.). Also Pantaleoni *Teoria della Pressione Tributaria*, p. 41.

production would be far reaching. Thus, both because of its direct and its indirect effects, a government is morally bound to consider the effect of its tax impositions, both with respect to their amount and their adjustment. The constant aim should be to interfere as little as possible with the processes of production.

Whether a government should encourage production by means of protective tariffs or otherwise—creating limited legal monopolies—is a different matter. This is a question of the functions of government and of governmental policy, not of public finance. But when a government by its tax system, or by the amount of its taxes, unnecessarily curtails production or produces unequal conditions of production, it does an injustice to the taxpayers affected by lessening their ability, absolutely or relatively, to satisfy their wants; and at the same time lessens its own efficiency by diminishing the source of its material means of usefulness; thus constantly threatening stagnation, if not degeneracy, instead of promoting the highest development, intellectually, morally and spiritually—by promoting the material conditions of such development. That the task of the government in duly observing the effects of its taxes and tax system upon production is a difficult one can not be denied. The complexity of the conditions that enter into the problem makes this inevitable. Nevertheless, consideration of these effects is necessary, both that production in general may not be unnecessarily checked, and that the production of one class may not be promoted at the expense of another class, thus effecting inequalities and injustice, instead of the equality and justice for which a government stands.

2. *Taxation and Distribution.* The effect of taxation upon distribution is not less important than its effect upon production, not only because of the influence of the distribution of wealth upon economic and social conditions, but

because the distribution of wealth is a very large factor in the determination of the character, methods and amount of production. For instance, large industries and large-scale production are economic phenomena which have their economic basis in large accumulations of capital, which change the whole relation of capital to labor as well as relative social conditions. Both the economic and social importance of distribution, therefore, demand that careful consideration should be given to the possible effects of taxation upon the distribution of wealth. The importance of the social and economic effects of the distribution of wealth must be assumed as self-evident. To adequately treat the question here would take us too far afield into a discussion of social and economic problems. I would, however, call attention to four different ways in which taxes do, or may, influence distribution; and at the same time call attention to some of the more immediate effects.

(1) In the first place there is the inevitable change in the distribution of wealth consequent upon taxation and the expenditure of its proceeds. Wealth is taken from the pockets of the producing class and transferred to the pockets of those who perform the services of the government or provide it with material goods. This is unavoidable in modern political societies where co-operative division of labor is so fully realized. But no hardship or injustice is thereby incurred. Those who provide the revenue and those who consume it in performing the functions of government are equally supporters and maintainers of the government, and both are equally gainers by this division of labor. There is no injustice, therefore, in this effect of taxation upon distribution, so long, at least, as the effect is but the normal result of legitimate taxation to meet the essential needs of the government.

(2) The second method by which taxation may (indeed

does) effect distribution is by the tax system itself. This method is essentially indirect. Two illustrations will make this method sufficiently clear: Protective tariffs and personal property taxes.

Granting the legitimacy and justice of protective tariffs, their first and more direct effect is to divert wealth from employment in natural channels of production to artificially created channels. This in itself may be an economic gain to the whole community as well as to those immediately concerned. But however this may be, protective tariffs have the further effect of establishing special privileges to certain classes, making possible the colossal fortunes of the Carnegies and Rockefellers. The same is true of any other monopoly-creating tax. The importance of these changes lies not only in their reactive effects upon the methods and amount of production, but also in widening social distinctions and creating social discontent.

The distribution effected by the abominable system of personal property taxes in the United States, while more indirect and less perceptible is not less certain, and at the same time results only in the most patent injustice. Such taxation is practically regressive; the richer classes having larger accumulations of personal property, more easily evade the tax assessor. The tendency of such a tax system is to foster the growth of large fortunes by relieving them of their just burdens, but at the expense of the smaller fortune. One class in society pays the taxes of the other class. The economic effect is precisely the same as if property was forcibly taken from the one class and transferred to the possession of the other. To this economic injustice there is added the political injustice of throwing the heaviest burden of taxation upon those who have the least ability to bear it. Thus, again, instead of promoting justice and equality the government is made an instrument in fostering injustice and un-

equal opportunities, with the attendant social inequalities. The same unjust influence upon distribution is effected by any system of taxation that results in an unequal assessment and collection of the tax burden.

(3) The influence of the rate of taxation upon distribution involves chiefly the question of progressive taxation, for a strictly proportional tax leaves the same relative distribution of wealth after as before the tax, effecting distribution only in such manner as is inseparable from the nature and use of taxation. The maintenance of the same relative economic conditions, or the equalizing of the burdens of taxation, may also be the special object of the progressive rate, and so far as this purpose is carried out the progressive rate simply corrects the defects of the proportional rate by accomplishing in fact what it stands for in theory. The justice of the progressive rate from this point of view will come up for discussion in a future chapter. We need only to observe here that however just the progressive tax may be it effects a different distribution from that entailed by a proportional tax, though only such as is incident to the system itself.

It is a far more serious question where progressive taxation is used with the deliberate purpose of effecting an artificial distribution of wealth, as in the social-political theory of Wagner.¹ Such a use of taxation is, however, a social use and does not strictly come within the province of public finance.² Moreover, it rests upon the assumption that it is a proper function of government to equalize the fortunes of individuals. This, however, is not an admitted function of government in the modern state, though it was practiced by the ancient Hebrews,³ was attempted by some of the Spar-

¹ *Cp. cit.*, ii, pp. 207, 385-6 and 455-9. Also i, p. 47.

² Cf. Meyer *op. cit.*, sec. 67; Vocke, *op. cit.*, p. 43, and Marzano, *Compendio di Scienza delle Finanze*, p. 116.

³ *Leviticus*, xxv, 10.

tan kings,¹ and recommended by the agrarian reformers of ancient Rome.² At the present time this doctrine finds defenders only in the different schools of socialism. The weakness of the whole doctrine is excellently summed up by Professor Seligman, when he says that "a legal equality which would attempt to force an equality of fortune in the face of inevitable inequalities of native ability would be a travesty of justice."³ Further comment is unnecessary.

(4) A final use of the progressive rate is to effect a complete revolution in the distribution of wealth by converting private wealth into public wealth by a process of confiscation. This is advocated only by the extremes of socialism, and, with respect to land, by the disciples of Henry George. This use of the tax is so foreign to present ethical standards that it has no practical significance and needs not to be discussed here.

In the brief summary that we have attempted of the possible influence of taxation upon distribution, inclusive of the effects upon social and economic conditions—upon spiritual as well as upon material development—sufficient, I think, has been said to emphasize the necessity of great care lest distribution be too arbitrarily and too unnecessarily affected by taxes. It illustrates also the truth of the statement of Professor Adams, that "the distribution of wealth within a country is of as much importance to its public economy as the possession of wealth."⁴

But besides its social and economic importance, the use of taxation to effect a distribution of wealth other than is entailed in the system itself, has the further importance that it violates the "natural right" to property as understood in the preceding chapter. As was there indicated the claim of

¹ See Plutarch's *Lives of Agis and Cleomenes*.

² See Plutarch's *Lives of the Gracchi*.

³ *Progressive Taxation*, p. 69.

⁴ Adams, *Public Debts*, p. 151.

the state, or government, is limited to its needs. To go farther than this, to appropriate the property of some to bestow it upon others, however indirectly, is to transgress the "natural law," is to commit an injustice.

3. *Taxation and Consumption.* Only recently has consumption played any important part in either economics or public finance. With the classical economists the safe-guarding of production was regarded as a prime element in a sound theory of taxation; while the ethical economists and the socialists have given special attention to distribution—both the distribution of the tax burden and the use of the tax in the distribution of wealth. It has remained for the subjective economists—the Austrian school—to lay emphasis upon the relation of taxation to consumption.

Of these several interests consumption is of most vital importance; for objectively and economically considered, consumption is the end of all production, and we may add also of distribution; while subjectively and ethically considered, consumption is the process by which the wants of the individual are satisfied, so far as they are materially determined—that is, the self-perfected, realized. Emphasis upon consumption, therefore, is a recognition of man as a compound of needs whose realization is the essence of his being. It changes the view-point from the *thing* to the *person*, the means to the end. Not the creation of wealth, but the use of it, is made the fact of most importance.¹ In the power of consumption is seen the best measure of material well-being; but material well-being, at least until a certain standard is attained, has a most important bearing upon the development of the whole spiritual life of man.

In fact, consumption, both by its amount and by its character, entails far-reaching results. It profoundly affects production by affecting the efficiency of labor; for efficiency is

¹ Cf. Walker, *Political Economy*, p. 294.

determined more by what one consumes than by what he produces. The amount and character of consumption affect also distribution, as, for example, by their influence upon the standard of life, which, in turn, has its effect upon efficiency. Whatever, therefore, affects consumption affects the whole economic life; but whatever affects the economic life affects, directly or indirectly, man's complete development. For these reasons, and because private property is an expression of human personality, of the effort to satisfy human wants, the government is in duty bound to observe the greatest care that its system of taxation does not unnecessarily interfere with individual consumption.

But the practical determination of what part of individual wealth should go to the satisfaction of individual wants, and what part should be given to meet the needs of the government—to satisfy collective needs—is a problem of the most difficult character, involving as it does so many complicated conditions and circumstances. As worked out by the Austrian economists,¹ however, the theoretical solution of the problem is made simple enough, by placing the satisfaction of collective needs upon exactly the same footing as the satisfaction of private needs. That is to say, the same laws of subjective values, of marginal utility, that rule in private economy are made to rule in public economy.² The doctrine, however, contains no new principle, but applies to

¹ Meyer, Sax and Wieser. This school has a strong following in Italy, Ricca-Salerno being one of its most able exponents. His *Scienza della Finanza* is an excellent and lucid résumé of the more pretentious work of Sax.

² The credit of first applying the economic theory of subjective values to finance is claimed by Sax for himself. His theory, however, is substantially the same as that of Robert Meyer, in spite of the effort to prove a difference. The Italian economists do not concede the credit to the Austrians. Mazzola, in a note to his *I Dati Scientifici della Finanza Pubblica*, p. 24, claims the honor for Pantaleoni, referring to an article published by him in 1883 in the *Rassegna Italiana*, entitled: *Contributo alla Teoria delle Specie Pubbliche*.

finance as to economics a principle long familiar to utilitarian, or better Hedonistic, ethics—the obtainment of the greatest possible pleasure at the least possible sacrifice.

We may for the present dismiss this theory with the remark, that while most extravagant claims are made for it (which will be considered more fully later) it correctly recognizes the fact that the satisfaction of collective and of private needs is, in a sense, mutually exclusive, or that taxes lessen the consuming power of the taxpayer. It is this fact that makes the problem such an important one. Yet it is quite as true to say that the satisfaction of collective and of private needs supplement each other, for the satisfaction of the former conditions, as we have seen, the satisfaction of the latter, thus adding to the complexity of the problem.

We can not stop to discuss this aspect of the question further. We have succeeded in our purpose if we have made clear that taxation and economics are most intimately related, and have made clear the importance, and, at the same time, the difficulty of the question involved. For it has been shown that, indispensable as they are, taxes may be so levied as to work most injurious and unjust results upon production, distribution and consumption through the operation of economic laws, thus materially affecting human well-being. We have seen, also, that the whole question revolves about the problem of shifting and incidence in taxation, which, as we have seen, is determined by the operation of the phenomenon of price, which itself is objectively determined by the law of demand and supply and subjectively by the law of marginal utility. It is, then, to these economic influences and economic results that the statesman should give careful attention if justice is to be an aim in taxation. But while very definite conclusions may not be possible, Professor Seligman has shown that substantial results may be obtained

as a guidance in legislation.¹ Without such observance of economic laws, conditions and results the first requirements of ethical taxation are put to naught.

III. TAXATION AND ETHICS

Important as is a knowledge of economic laws and forces in questions of taxation, this knowledge will not of itself determine the true principles on which taxes should be based. From such knowledge we may learn the economic results of kinds and systems of taxes, but nothing at all of principles, that is, of ethical principles. Actual results tell of conditions as they are; ethical principles of conditions as they should be. Yet, without a knowledge of the former it would not be possible to prescribe the latter. Actual economic results have also the further significance that they indicate the extent to which the ideal, contained in the principle, is realized. They are at once, therefore, a manifestation and a guide. It is, however, the ethical principle that is of real primary importance; for the ethical principle is the fundamental principle of taxation, as the ethical basis (as we shall have occasion to see) is the ultimate basis.

In thus insisting upon the paramountcy of ethical principles in taxation, that the ends of justice can not be attained by the mere play of economic forces, I am aware of running counter to a theory, implied in the doctrines of the classical economists, and expressly championed by Sax and his school.² For according to Sax, at least, economic laws are but the expression of the process of the realization of justice; or, justice is simply the realization of economic laws, particularly of the subjective law of marginal utility. In economic laws are found the *alpha* and *omega* of justice in taxation. Yet justice is not to be directly aimed at, for, so we

¹ See, *Shifting and Incidence of Taxation*, ch. viii.

² Cf. Sax, *Grundlegung*, 83, and Ricca-Salerno, *op. cit.*, bk. ii, ch. vi.

are told, ethics has no place in public finance. So far as public finance is concerned ethical ends are a consequence, not an aim.¹

To this doctrine two important objections may be opposed: It rests upon the false Hedonistic assumption that pleasure is the highest Good; it assumes that economic motives and ends are one and the same as ethical motives and ends. That the highest Good,—the ethical end,—is not pleasure, it is not our place to demonstrate here;² but it must be admitted that it is not consonant with a theory that makes the ultimate end of the state the realization, or perfection of man. Pleasure (in the sense of satisfaction, happiness—Aristotle's *Eudæmonia*³—not Hedonistic pleasure) is an accompaniment, a necessary incident, if you will, but is not itself the end.⁴ Hence economic pleasure, *as such*, is by no means necessarily identical with ethical ends. Whether or not it is so, depends upon the *idea* of the Good whose realization is sought.

However closely related, therefore, economics and ethics may be in certain phases of taxation, ethical motives and ends are entirely distinct from economic motives and ends. *Purely* economic motives are founded upon the idea of a selfish pleasure of a more or less material character, whose realization is the economic end. Ethical motives, on the contrary, are founded upon the idea of a Good of a spiritual character—the fulfilment of the possibilities of our nature. It is not a selfish Good, for it is recognized as the "good" of others as well as for the self. Its realization is the ethical

¹ This is also implied throughout by Sax in spite of his contention to the contrary.

² See Green, *Prolegomena*, bk. iii, ch. i.

³ Described by a German philosopher as "the culture, the all-sided development of all human faculties, and the satisfaction which is founded thereon." Cf. also Paulsen, *System of Ethics*, p. 49.

⁴ Cf. Green, *Ibid.*, secs. 158 and 161.

end, which involves justice in the relations of man to man, individually and collectively. And because the ethical end is the highest end it is paramount over all other ends; hence over economic ends, and thus, also, in matters of taxation. We can not, then, admit that in questions of taxation economic self-interest is the measure of the individually or the socially just, however dependent our notions of ethical justice may be upon economic results.

For insisting upon an essential distinction between economics and ethics, and that the question of taxation is fundamentally an ethical question, no apology is needed. The supremacy of the ethical element is the only logical deduction from the theory of the state and the individual presented in the foregoing chapter. Indeed, from the ethical nature of man it follows of necessity, or as the old English moralists¹ would say, it is "according to the reason of things," that the ethical element should be the ruling element in all social relations and social institutions. In fact, it is true of taxation, and of the thousand and one social questions that are agitating the world to-day, that no satisfactory or permanent solution is possible which does not conform to an ethical standard, though that standard pertains directly to economic conditions. That is, there should be an ethical standard of economic conditions, for as Mill well says: "The first thing in every practical discussion should be to know what perfection is."²

If we are at all correct in our conclusion, even more untenable than the theory of Sax is the position maintained by McCulloch: That since perfect equality is unattainable, "in laying down a practical rule that is to apply to all taxes, equality of contribution is of inferior consideration;" and that, "It is the business of the legislator to look at the practical influence of different taxes, and to resort by preference

¹ Cudworth, Clark and Price.

² *Political Economy*, v. 2, sec. 2.

to those by which the revenue may be raised with the smallest inconvenience."¹ The error of this doctrine is not so much in the premise as in the conclusion. For the doctrine erroneously assumes that the *salus populi*, which is held to be of "prime consideration," may be permanently antagonistic to ethical considerations; that policy and justice may be permanently opposed to each other. No, the truth is with Madame Royer, who places both "utility and justice above the narrow consideration of policy;" but adds, that if "justice is at variance with utility, we say that justice is preferable."² The fact is that there can be no true social policy, no true policy in any of the social relations of life, that is not based upon ideas of justice. Justice is the foundation of a permanent social order, and a permanent social peace. Only upon the grounds of a "policy" best known to the "politician," or through want of a wholesome influence at the ballot box of a powerful minority (unless, perchance, the masses are soothed by ignorance, lethargy, or hopelessness) can a system of taxes long endure, that is recognized by all competent judges as full of injustice.³

Our conclusion, then, is: That the problem of taxation is partly economic and partly (but also essentially) ethical, the two elements being inseparably related. It is an econ-

¹ McCulloch, *Taxation and Funding*, p. 18 (2d Ed.). Cf. also Schmoller, who opposes to the principle of Beitragsfähigkeit, the principle: "Nimm wo es geht." Quoted by Meyer, *Die Principien der gerechten Besteuerung*, p. 128. The declaration of Held, that "the practice of using those taxes over which there is the least complaint is the wisest," is not an acquiescence with McCulloch; for with Held justice is not sacrificed as end, or opposed to policy. On the contrary, it is policy to heed the "complaint" because it is the surest (negative) guide to the realization of justice, the surest measure "für die Grösse persönlicher Opfer." (*Einkommensteuer*, p. 115.)

² *Théorie de l'Impôt*, Introduction, pp. 14-5.

³ As note the tax systems in many of the American Commonwealths (See Ely, *Taxation in American States and Cities*, and Seligman, "The General Property Tax," in *Essays in Taxation*).

omic question in that it has to do with economic goods, conditions, and relations; ethical, in that it has to do with man as a spiritual and ethical entity, at once an end in himself, and the end of all social life. Each supplements the other. As Bastable says: "The important problem of justice in taxation is indeed an ethical one, but until its economic effects are known it is impossible to say whether any given form of taxation is just or the reverse."¹

In insisting so strongly upon the ethical character of taxation no pretension is made that absolute justice is attainable. In human affairs only relative justice is possible. But we can not reach the highest approximate to justice without first knowing, as Mill says, what perfection is, and the "highest approximate" is all that can be desired.

But the problem of taxation is something more than an economic and an ethical one; it is also political. For our conception of the justice in taxation is quite as dependent upon our conception of the nature of the state and of the functions of government, as it is upon economic results.² But the political conceptions, like the desired economic results, are relative to ideals of justice.

We may therefore consider taxation as having three bases—political, economic, and ethical—which though distinct are inseparably related. Upon our conception of these bases, and of their relative importance, must our principles of taxation be determined. Sometimes the one and sometimes the other is assumed as the only basis, with a consequent narrowness of views and one-sidedness of conclusions. They must be considered in their mutual relation and mutual dependence. We shall consider these bases somewhat historically and critically in the three following chapters.

¹ *Public Finance*, p. 9. Cf. also p. 273.

² La justice dans l'impôt est une conception extrêmement difficile à formuler parce qu'elle dépend de l'idée qu'on se fait des droits et des devoirs des gouvernements. Léon Say, *La question des impôts*, p. 66.

CHAPTER IV.

THE POLITICAL BASIS AND PRINCIPLES OF TAXATION

AS we have seen in the previous chapter, taxation is a contribution from the private property of the individual for the support of the government—for the satisfaction of a common need. It arises out of the nature of the state, the necessity of government, and the prevailing system of private economy. It was further shown that the tax may be regarded as voluntary or compulsory according to the point of view in question; that it is influenced by economic conditions and involves economic results; and that above all, taxation is a supremely ethical question which must be determined by ethical standards and in conformity to ethical ideals.

Now these three phases—the political, the economic, and the ethical—are not separate, but are inseparable phases of the problem of taxation. They nevertheless afford distinct bases of taxation—bases, however, that lead to false results if taken in their isolation and not regarded in their interdependence and unity. The primary basis is the political basis, since the whole problem grows out of the relation of the individual to the state. But since economic goods are necessarily involved, and so the economic relations of the individual to the state, there is, following the political basis and inseparable from it, an economic basis. And finally, because of the ethical character of the taxable subject, and of the ethical character of all social relations, there must be an ethical basis which must act as a guiding norm in the determination of the principles that should control

taxation; since because of the supremely ethical character of the problem, the highest demand is the attainment of justice.

By the 'political basis' of taxation is understood that basis which rests upon a definite theory of the state, and from which certain principles of taxation may be deduced; or it is the determination of principles of taxation in accordance with an accepted theory of the state, or is the logical outcome of such a theory. Hence the possibility of a wide range of principles, varying from those of the extreme individualist to those of the extreme socialist. These we can not attempt to consider in any detail, but must confine ourselves to a few of the more important theories—those that have the greatest influence, either theoretical or practical. Such are: the contract theory, the evolution theory, the utilitarian theory, and the social theories (as anarchism, communism and socialism).

Now in examining these views of the principles of taxation, as related to and dependent upon a theory of the state, two things must be constantly kept in mind: The deductions made by the advocates of a given theory, and the logical deductions of that theory. It is also important to note whether the question is viewed in its entirety, or whether the political basis is regarded as the only basis. Before, however, discussing the theories mentioned we may mention briefly previous conceptions of the state and taxation.

In the time of Plato and Aristotle little was known or thought regarding principles of taxation, though both Plato and Aristotle elaborated a theory of the state. Had they attempted, however, to determine principles of taxation from their theories of the state, it is certain that they would have sought principles consistent with the highest development of the individual. The principles of Plato would have

looked towards the attainment of ideal justice, while those of Aristotle would have been adjusted to a 'mean' capable of realizing an approximation to justice. But with both, ethical results, as they saw them, would have stood in the foreground, since they saw in the state the proximate, and in the individual the ultimate, good.¹ And yet with neither Plato nor Aristotle would the laws of 'universality' and 'equality' apply to all members of the commonwealth. For with Plato the burdens of the industrial life, and so the burden of supporting the government, would fall upon the working classes, the "husbandmen;" while with Aristotle the same burdens would fall upon those destined "by nature" to be slaves.

The Roman idea of the state and government likewise precluded it from forming a basis for principles of taxation. The large dependence of the government upon booty and tribute for its support, together with the exemption of the patrician—the governing—class from the tax burden, prevented taxation from becoming a serious problem whose principles needed investigation and determination.

Coming down to medieval society and to medieval thought, we find new conceptions of the state and more definite ideas concerning taxation. The system by which individuals gave up their persons and property to lesser lords for protection, and these, in turn, their persons and property to the higher nobility, and the higher nobility to royalty; the system of sub-infeudation; and, indeed, the whole feudal system, inculcated the idea of the dependence of the individual upon higher political power, and so made protection

¹ However true it may be that the Greek subordinated the individual to the state, I do not believe that any such doctrine can be found, by any consistent interpretation, in the philosophy of Plato or Aristotle, as is so often assumed. With both, the State was only a means for the fullest development of the "golden nature" of the individual.

a dominant idea of the social and political structure of society. For this protection personal service was performed. Hence, as the feudal society gradually gave way to the "status of contract," and personal service to taxation, it was only natural that taxation should have been looked upon as a payment for the protection received from the government. The tax was simply a payment to the government of the costs of its service of protection. It was the 'cost-of-service' theory of taxation. This theory, however, soon gave way, at least in part, to the 'value-of-service' theory—a theory that measures taxation by the value of the service of protection, instead of the cost of that protection. The value of the protection was then conceived to be dependent upon the amount of the property protected, the protection of the person being apparently regarded as a negligible quantity. A tax, therefore, proportioned to one's property would be proportionate to the value of the service that he had received. But amount of property protected was very early regarded as the measure of one's economic ability, or 'faculty,' and so of one's ability to pay taxes. Though 'faculty' might be considered as only another aspect of the 'value-of-service' principle, the faculty—*facultas*—of the individual to pay taxes was early laid down as a distinct measure, or canon, of taxation.* It was largely out of these conditions that grew the conception of the 'social contract' and the theory of taxation that evolved from it.

I. THE SOCIAL CONTRACT AND TAXATION

At the same time that historical conditions were lending much force to the conception of society as founded upon a contract, there was gradually developing out of the old Stoic conception of a "law of nature," though with considerable

¹ Cicero somewhere identifies faculty with property.

² Cf. Seligman, *Progressive Taxation*, p. 127.

transformation of ideas, a theory of a "social compact" as a complete explanation of the origin and nature of the state. Although this theory is now universally repudiated by economists and political scientists, no theory of the state has exerted a wider or deeper influence, theoretical and practical, in the fields of politics, economics and finance, particularly in England, France and the United States. The contract theory had, for example, a great influence upon Jefferson and the founders of our Republic, and has also given color to much subsequent legislation,¹ while its assumptions are to-day among the most commonly accepted doctrines of lawyers, statesmen, and the general public, especially in matters of taxation.²

1. *The Political Philosophers.* The theory of the Social Contract has received its fullest development in the writings of Hobbes,³ Locke,⁴ and Rousseau,⁵ although the doctrine is older than the *Leviathan*.⁶ The theory is so generally understood that it is not necessary to enter into a detailed account of it. In brief it is this: Prior to the existence of civic society mankind lived in a "state of nature," according to Hobbes in an un-social, even anti-social, "state of war," but with Locke and Rousseau under more or less social conditions. In the course of time the individuals composing the non-civic society became, as it were, suddenly conscious of the fact that their happiness and well-being would be furthered if they would organize themselves into a body politic and choose a common arbiter, or arbiters,

¹ Cf. for example, speech of Dallas, *Annals of Congress*, 14th C., 1st Sess., p. 1681.

² Cf. Cooley, *Law of Taxation*. Also second message of Gov. Black of New York (1896), and newspapers at the time of the Income Tax decisions in 1893.

³ *Leviathan, De Corpore Politico and Philosophical Rudiments*.

⁴ *Civil Government*.

⁵ *Social Contract*.

⁶ See Grotius, *De Jure Belli et Pacis*. Also, Sidgwick, *History of Ethics*, pp. 157-160.

protection "is the enjoyment of life, which is equally dear to poor and rich, the debt which a poor man oweth them that defend his life, is the same which a rich man oweth for the defense of his."¹ But this equality of taxation does not mean, however, an absolute equality, for the benefit of the protection is the "enjoyment of life" as measured by material consumption; and hence taxes should be based upon what one "spendeth," or consumes, by which "every man payeth equally for what he useth."² Similarly in the *Politics*: "The burdens of the commonwealth being the price that we pay for the benefits thereof, they ought to be measured thereby." And since this benefit is the equal enjoyment of the peace and liberty to use our industry to get our living, we should contribute equally to the common charge, not as measured by the results of our industry, but by our consumption. "That seemeth therefore to be the most equal way of dividing the burden of public charge, when every man shall contribute according to what he spendeth, and not according to what he gets."³ Again in the *Philosophical Rudiments* it is declared, that taxes being "nothing else but the price of bought peace, it is good reason that they who equally share in the peace, should also pay in equal part."⁴

In brief, the position of Hobbes is this: The purpose of the state is the protection of the life of the individual that he may enjoy the peaceful pursuit of a living, and the individual should pay for the expense of this protection; the tax, which is the price of this 'bought peace,' should therefore be based upon the benefits derived from this protection; and since the value of this benefit is determined by the

¹ *Leviathan*, Part II, Ch. 30, p. 30. (All references to Hobbes are from Molesworth's edition.)

² *Ibid.*

³ *De Corpore Politico*, Part II, pp. 216-7.

⁴ *Philosophical Rudiments*, p. 173.

amount of the enjoyment, which is itself measured by the amount that one enjoys in the way of consumption under the protection of the state, the tax should be based upon the consumption of the individual; and since all equally enjoy the benefits of protection, as thus measured by consumption, all should bear equally the burden of taxation according to their enjoyment of consumptive goods, that is, in proportion to their consumption. And that this principle should govern the distribution of taxes is in accordance with the 'natural law.' "Rulers," says Hobbes, "are by the natural law obliged to lay the burden of the commonwealth equally on their subjects. Now in this place we understand an equality, not of money, but of burden, that is to say, an equality of reason [proportion] between the burdens and the benefits. For although all equally enjoy peace, yet the benefits springing from thence are not equal to all,"¹ because of differences in consumption, which is the true measure of benefits. That is, the cost of protection should be distributed among those receiving the protection in proportion to its value to them, or in proportion to the value of the benefits of protection, which is the quantity of consumption.

Are these conclusions of Hobbes a logical consequence of his fundamental premise, or the logical outcome of his conception of the state? Or, again, does the theory of Hobbes give us a satisfactory principle of taxation, grounded upon a sufficient and satisfactory basis? Both questions, we believe, must be answered in the negative. For, with respect to the first, if protection is the sole purpose for which political society exists, then the cost of that protection is the logical basis of taxation, but such a basis of tax distribution is a practically impossible basis. Or, if the tax be considered to be paid for the benefits of the protection, not for the

¹ *Philosophical Rudiments*, p. 179.

protection itself, then the value of those benefits would seem to be the true basis for the distribution of the tax burden. But, again, this is an impossible basis, for the value of these benefits is an incalculable quantity, since the protection upon which they rest is the foundation of our whole civilization and of all the benefits derived therefrom. But since a tax can not equal the benefits let us concede that it should be in *proportion* to benefits; that is, the share of each should be such a proportion of the total expense, as the benefits that he derives from the protection are to the total benefits. But this, again, is not a calculable quantity. Hobbes, however, gets around the difficulty by first assuming that the benefits consist in the peaceful pursuit of "our trades and callings," and then illogically concluding that the benefits are measured by what we consume rather than by what we produce. In brief there is no logical connection between Hobbes' theory of protection and his theory of consumption as the basis of taxation. Nor is Hobbes more satisfactory in his assumption of benefits as the true principle of taxation. Even if we concede that, in a sense, the theory of benefits is a logical deduction from the theory of protection we maintain, and shall presently show, that the theory of protection is wholly inadequate, as it expresses at best only a half truth. On the other hand the theory of benefits as understood by Hobbes is equally inadequate, since it expresses even less than a half truth. It is a grossly inadequate conception of the state that conceives its benefits to be limited to the power of peaceful industry, or to the personal consumption of economic goods. The benefits of government are manifold and are not to be limited to the enjoyments derived from the consumption of material goods. And the tax must include the whole range of enjoyments. Further, the theory of benefits is a false and impossible principle for taxation; false, because it assumes an erroneous

conception of the relation to the state as the basis of taxation; impossible, because the benefits that are supposed to form the basis of the distribution of taxes are in no way a calculable quantity.

Not only, therefore, does Hobbes commit the double error of assuming benefits as the true measure of taxation, and that these benefits are proportioned to our consumption of economic goods, but his theory altogether ignores the moral element that is involved in the relations of individuals to each other in society or the state, and hence he expressly repudiates the principle that proportions taxation to ability.¹ Hobbes finds the justice of his principle solely in the assumption that our benefits are proportioned to our individual economic consumption. And he finds corroboration for his principle in that it conforms to the most expedient. A tax proportioned to consumption, he says, "seemeth not only most equal, but also least sensible, and least to trouble the mind of them that bear it."²

Turning from Hobbes to Locke and Rousseau, we find that they gave little attention to the problem of taxation. Yet Locke expressly bases taxation upon protection and intimates that it should be proportioned to its cost, though it must be admitted that his statement on the latter point is not very clear. "'Tis true," he says, "government cannot be supported without great charge, and it is fit every one who enjoys a share of protection should pay out of his estate his proportion for the maintenance of it."³ This is practically all that Locke has to say on the subject, so that we are left in doubt how the proportionate share of each in the tax burden is to be determined. But it suffices for our present purpose that the principle of taxation is based upon protection, each sharing his proportion of the cost.

It is interesting to note, however, that Locke emphasizes

¹ Cf. *De Corpore Politico*, p. 216.

² *Ibid.*, p. 217.

³ *Civil Government*, sec. 140.

the importance of free consent in the payment of taxes, i. e., consent of the majority—since arbitrary taxation “invades the fundamental law of property, and subverts the end of government.” This is not only an emphasis upon the moral obligation to pay our share of the cost of our protection, but it follows from Locke’s theory of civil government and from his theory of property.¹ Yet Locke, himself, makes this moral obligation stand for naught by his theory that the ultimate incidence of all taxes is, by the inevitable workings of economic laws, upon land; since the merchant will not and the laborer cannot pay the taxes. “It is in vain,” says Locke, “in a country whose great fund is land, to hope to lay the public charge of the government on anything else; there at last it will terminate. The merchant (do what you can) will not bear it, the laborer cannot, and therefore the landlord must.”² The merchant “will not,” because he can shift it by raising the price; the laborer “cannot,” “for he just lives from hand to mouth.”³ Thus, the position of Locke amounts to this: We are all in duty bound to pay our share of the cost of the protection of government, yet the large merchant class will not, since economic laws enable them to shift the burden, and the large laboring class cannot, because they are already at the minimum of subsistence. That is, economic laws and conditions stand in opposition to the moral law, thus compelling one class in society—the landlords—to bear the burdens of the rest. The theory as a whole, then, is inconsistent with itself, but the fault here is with the theory of incidence rather than with the theory of protection.

Finally, in the case of Rousseau, we find no attempt to develop a theory of taxation based upon his theory of a

¹ *Civil Government*, ch. 5.

² *Interest*, p. 60 (Works, Vol. IV, Edition 1824). Cf. also p. 57.

³ *Ibid.*, p. 57.

social contract. Yet out of Rousseau's theory of 'liberty and equality,' which he made the mainspring of the contract, theories of society and taxation were developed, mainly by the French communists at the end of the eighteenth century, such as Baboeuf and Morelly. But as these theories were communistic in character we shall postpone their consideration until we take up the question of Social Theories and Taxation.

2. *The Protection Theory of Taxation.* Our preceding discussion has shown that the contract theorists based their principles of taxation solely upon the idea of protection. This doctrine we have also found to be contained in much legal thinking, as in the popular mind, and it is also found in a certain school of economists. Because, then, of its historical and practical importance it may be well to examine separately, though briefly, both the merits and the demerits of the doctrine, its truths and its limitations.

In discussing the protection theory of taxation we should carefully distinguish it from the similar economic theory, better known as the give-and-take, or the *quid pro quo*, theory of taxation. The latter will come up for discussion in the following chapter. Here we are concerned only with the protection theory as forming the political foundation of taxation and of its principles. True, the kindred economic theory rests upon the assumption that protection constitutes the true political basis of taxation, but it views the relationship that necessitates taxation more from the economic point of view and deduces its principles wholly from economic considerations, or from economic laws. But although there is a clear theoretical distinction, it would be difficult to find any treatment of the subject wholly free from the one or the other point of view. Nevertheless we shall view them separately, though recognizing their practical inseparability.

From the purely political point of view, then, I would

adduce as the most important criticisms of the protection theory: That its fundamental conception is inadequate; that the principles deduced are not consistent with its logical deductions; that it sees no ethical consideration beyond the obligation of each to pay his share for the protection that he receives.

1. We have already pointed out the fact that this theory is based upon an inadequate conception of the state, and from our point of view this statement finds sufficient proof in the theory of the state outlined in chapter II. If we are right in our conception of the state the protection theory is necessarily inadequate. It expresses, in fact, but a half-truth. For while the protection of persons and property is the fundamental basis of social order and social progress, the purpose of the state and the functions of government are altogether too large to be comprehended under the conception of protection. The true conception includes protection and admits that it is fundamental, but it does not recognize protection as exhausting all that the state stands for. The state not only represents the highest culmination in the development of the social life of a people, but it is at the same time the conditioning instrument in the totality of their development, or in the development of the individual. To this end the protection of persons and property is a necessary incident but it is only one among many incidents, though we will grant that it is the most fundamental and most important. Hence the aim of taxation cannot be limited to the one end of protection. Its range is necessarily as comprehensive as the functions of government acting as the agent of the state in the fulfilment of its purpose. This is practically conceded by defenders of the protection theory who, like Von Hock, make protection co-extensive with national well-being,¹ or who, with Sismondi, make it include

¹ Von Hock, *Die öffentlichen Abgaben und Schulden*, §§ 1-4.

all of the advantages that are derived from it, as roads, honor, justice, education, religion, etc.¹ But if protection forms too narrow a conception for the political basis of taxation, the principles deducible from this conception must likewise be insufficient, as we shall endeavor to show.

2. That the principles deducible from such a basis are insufficient is shown, among other reasons, in the fact that those who proceed upon its assumption are unable to carry the doctrine to its logical conclusions. For, logically, the theory involves the cost-of-service principle of taxation—the apportionment of taxes to the cost of the protection, whether of persons or of property. This position, however, is seldom maintained, it being usual to adopt in its place the principle that bases the tax upon the advantages, or the benefits, derived from the protection. But even if we assume that this principle is a logical consequence of its leading premise, as in a limited sense it, perhaps, is, it does not, any more than the cost theory, afford a working principle for rules of taxation; for both individual costs and individual benefits are incalculable quantities. But this apart, according to the benefit principle the tax should be proportioned to the benefits received. But this is impracticable. For on the one hand the tax should equal the costs (else the protection must cease), whether or not the costs exceed the benefits; while on the other hand the tax for the most part cannot equal the benefits, otherwise the revenue would enormously exceed legitimate expenditure. Thus, neither the principle of individual costs, nor that of individual benefits, the only logical principles deducible from a purely protection basis, are practically possible principles of taxation, since they have only a hypothetical existence.

Nor do we wholly escape the difficulty by harmonizing the two principles, as is universally done, on the basis of the

¹ Sismondi, *Économie Politique*, Vol. II, p. 165 (Ed. 1827).

totality of costs and the totality of benefits, assuming as the principle of taxation that the taxes of each should be such a proportion of the total costs as he shares of the total benefits. It is true that the total taxes must equal the total expenses of the government, but the protection basis of taxation does not afford in itself any ground for distributing the costs according to the benefits received, except upon the gratuitous assumption that the costs and benefits are in every case directly proportioned to each other. But even if this were true in theory no definite result would follow, since a proportion could not be established between two unknown quantities.

The fact is that upon the political basis of protection the distribution of the costs of protection according to the theory of benefits can have validity only upon the assumptions: (1) that the idea of protection is confined strictly to the protection of the person and of property; (2) that the value of the protection of the person is precisely the same for every individual;¹ (3) that the value of the protection of property bears a direct, ascertainable ratio to the amount of property protected,² a ratio that is most commonly assumed to be directly proportional. But this limitation of the function of government we have already seen to be too narrow even for the defenders of the protection theory. They assume that protection covers all of the advantages derived from the protection, and at the same time assume that these advantages have a definite money value that is proportioned to the amount of property of the individual. But these are assumptions only; they are not logic.

The failure of this school to arrive at logically deduced principles is emphasized still more in the fact that, not con-

¹ Cf. Von Hock, *op. cit.*, same reference.

² Examples are too numerous to mention. It is the almost universally accepted doctrine of those influenced by the conception of the state in question in the text.

tent with the theory of costs or of benefits, they make ability also the true norm of taxation, apparently regarding it as deducible from the theory of protection and in harmony with the theory of benefits, if not, indeed, synonymous with the latter.¹ But, as will be shown later, ability is a principle quite distinct from that of benefits, and has a foundation quite distinct from that of the protection theory of the state. The ability principle implies an ethical basis that is not to be found in the protection theory, or the theory of benefits. And in fact the inconsequences in the conclusions of this school arise very largely from the assumption of principles, in the development of their theory, that are not involved in their fundamental premise—their theory of the state.

3. Not least important among these assumptions is the assumption of ethical relations that are not involved in the theory of the state upon which their principles are based. For if protection is the sole basis of the state, originating in an actual or implied contract to that end, the tax, as we have seen, must bear a definite relation to the cost, or at best to the benefits, of that protection. There can be no escape from the tax for the protection of the person, and no escape for the protection of property, by those who may possess even the smallest amount of it. Moreover, this theory of the state does not in itself involve principles from which exceptions may be logically derived. Hence the only ground for any exception to the above rule for taxation is that of absolute necessity. Many writers, indeed I think I may say most writers, consistently maintain this position, though some would justify exemptions on the principle of ability, which involves ethical considerations.

Now it is my contention that any theory of the state is essentially defective from which practicable principles of

¹ Cf. for example Adam Smith's famous first canon of taxation, since widely accepted without qualification.

taxation cannot be logically derived, since a state implies as well as necessitates taxation. But such a theory the contract, or its counterpart the protection, theory does not afford. And this mainly because the ethical character of the state is ignored. The state is conceived of as static and as consisting of external, mechanical relations; whereas it is dynamic and its relations are essentially internal, psychical. This means also that the relations are ethical, and that ethical precepts are involved in the rules that determine the manner of the state's support. It means further, that the ethical precepts should dominate more and more in the practical rules of taxation the more a people develops its ethical consciousness; that principles and rules of taxation should not be derived from primitive conditions of society, but from the conditions prevailing in a society in the process of developing its internal relations, and with reference to its ultimate end. We may, indeed, seek to discover principles that controlled actions in the past, but in searching for principles for taxation we are searching for principles that should control the action of the future. Such principles are not mere records of past or actual experiences, but are the formulation of ideal norms for the guidance of conduct, determined by the inner nature of society and the state.

II. THE EVOLUTION THEORY OF THE STATE AND TAXATION.

The preceding discussion has shown us, at least by implication, that principles of taxation are not to be derived from specific functions of government, or from the historical origin of the state, but are to be derived from the nature and end of the state, which involves the nature and end of the individuals by whom the state is composed. Functions of government determine limits of taxation, and the actual origin of a state influences the character of its system of

taxation, but in neither case do they afford a basis for the determination of ethical principles for the distribution of the tax burden. Important as these truths are, they are frequently ignored, not only by the school of writers just considered, but among others, in part at least, by Mr. Spencer in the development of principles of taxation based upon his evolution theory of the state.

Turning, then, to the evolution theory of the state (and we shall confine ourselves to the theory of Herbert Spencer), we shall not find it necessary to trace the evolution of the modern state from the primitive horde and tribe, for the course of this development has nothing to do with Mr. Spencer's theory of taxation. Besides, in this respect the theory does not differ essentially from the historical theory of the state, except that the evolution theory assumes to discover the underlying principle that guides the course of the development. It is the principle that controls development that is the important thing in Mr. Spencer's theory of evolution, and the principle that controls social evolution is found to be precisely the same as that which determines all evolution in the plant and animal worlds—a principle that may be summarized as the survival of the fittest struggling in the direction of the least resistance, or, by co-operating forces, overcoming resistance. Hence the evolution of the social world, like that of all life, is mechanical, external; the moving power as the determinant of the "fittest" being ultimately Force—the force to resist or to subdue, the force to destroy or to utilize.

It is by the power of augmenting such forces through co-operation, that political society is made possible, and it is those peoples that possess this power in the greatest degree that are the fittest to survive and to develop. This suggests that social organization has not for its sole purpose mere survival, but has a larger, ultimate purpose in development

—the development of social organization and through it the development of the fullest life of the individual; for the development of the highest possibilities of life is the ultimate aim of all evolution. Now the all-essential to the highest development of the possibilities of individual life, that is, to the development of human nature, is the largest possible freedom of the individual in the exercise of his own powers as directed by his own nature, and so receiving “the good and evil results of his own nature and consequent results.”¹ But if this rule were without restraint in its application there would be only individual conflicts without individual development. It needs, therefore, limitation, so that with the freedom of the individual to develop himself, there must be recognized the like freedom of others. That is, “in the social state the conduct of each bringing to him these results must be restrained within the limits imposed by the presence of others similarly carrying on action and experiencing results.”² Thus is developed the fullest life compatible with equal freedom, “the ultimate end being a higher development of human nature.”³ In short, while there should be full freedom and liberty for the individual in the exercise of his powers, since his development depends upon himself, it is true that his personal interests, when unrestrained, tend to come into conflict with the like interests of his fellows, who should possess the same freedom of development as himself. And since this conflict of interests will not cease until altruism dominates the world,⁴ such freedom and liberty of each must be guaranteed by a supreme power—that is, by the state. The sanction for this interference in the conduct of the individual would seem to lie in the power of force—co-operative force—and the fact that those peoples that enforce such restraint prove themselves the fittest to survive and to develop.

¹ Spencer, *Justice*, p. 221.

² *Ibid.*

³ *Ibid.*, p. 226.

⁴ See Spencer, *Data of Ethics*, chs 11-13.

From this point of view of the state, and from what we may call its immediate and efficient cause, its chief purpose would seem to be to act as a protective agency, and hence it is that Mr. Spencer conceives of the state as a kind of a "joint-stock protection-society,"¹ whose function is to guarantee to each the fullest freedom for the exercise of his faculties compatible with the equal freedom of all others."² But Mr. Spencer rightly regards protection as only a primary, immediate function of government—a means to an end. This end, as variously stated, is to "administer justice," "to maintain the conditions under which each may gain the fullest life compatible with the fullest lives of fellow-citizens."³ Or, it is "to maintain the conditions under which individual life and its activities may be carried on,"⁴ though ultimately it is "the formation of character."⁵

But notwithstanding this recognition of ultimate ends, it is the immediate function of government that is the important thing in Mr. Spencer's philosophy of the state. Indeed, when a government assumes to do more than protect the individual in the exercise of his faculties, that is, when it assumes to participate positively in the development of human nature, or of human capacities and characters, it defeats itself and retards rather than aids the development of the 'fullest life.'⁶ And this conclusion obtains from whatever point of view we regard the state—from its immediate or its ultimate end. The state (or with Mr. Spencer indifferently, the government) must act simply as a restraining power, though the boundary line of this restraint is admittedly a difficult problem to determine.⁷

From such a theory of the state, what principles of taxa-

¹ Spencer, *Social Statics* (Abridg. Ed.), p. 122.

² *Ibid.*, p. 123.

³ Spencer, *Justice*, pp. 213-4.

⁴ *Ibid.*, p. 194.

⁵ *Ibid.*, p. 251.

⁶ Cf. *Social Statics*, p. 127. Also Ch. 26, especially 372.

⁷ *Ibid.*, p. 127 *et seq.*

tion follow, according to the views of Mr. Spencer? In the first place, it is to be observed that since the government must guarantee equal freedom of development, or negatively, equal conditions "under which individual life and its activities may be carried on," it is bound not only to respect a principle of equality in the distribution of the tax, but to exact only the minimum necessary for its support; since to do otherwise would be to deprive us of our liberties, or of the freedom to exercise our faculties."¹ Indeed, any tax is regarded as a curtailment of our liberty, yet necessary to the enjoyment of larger liberties, and so a necessary evil. Or, it is a necessary "sacrifice of a part to ensure the remainder of our property."²

But upon what principle is this equality to be realized and taxation confined to its proper limits? Upon Mr. Spencer's theory of a "joint-stock protection-society," the true measure of taxation would seem to be the principle that controls an insurance premium, as the state exists to guarantee our lives and property against the attacks of others, and also their free exercise and use. But with Mr. Spencer the limit of taxation is found in the actual costs necessary to guarantee the desired protection, while the principle of distribution is that of "benefits" derived from the protection.

"In the abstract," says Spencer, "the question does not appear to present any great difficulty. The amounts individually paid should be proportioned to the benefits individually received. So far as these are alike the burdens should be alike; and so far as they are unlike the burdens should be unlike. Hence arises a distinction between the public expenditure for the protection of persons and the public expenditure for the protection of property. As life and personal safety are, speaking generally, held equally valuable by all men,

¹ Spencer, *Social Statics*, p. 123.

² *Justice*, 209. Cf. also Montesquieu, *De l'esprit des lois*, bk. xiii, ch. 1.

the implication appears to be that such public expenditure as is entailed on their account should fall equally upon all. On the other hand, as the amounts of property possessed at the one extreme by the wage worker, and at the other extreme by the millionaire, differ immensely, the implication is that the amounts contributed to the costs of maintaining property rights should vary immensely—should be proportionate to the amount of property owned, and vary to some extent according to its kind.¹

Not only should taxes be proportioned to benefits, but “state burdens, however proportioned among citizens, should be borne by all. Every one who receives the benefits which government gives, should pay some share of the costs of government, and should directly and not indirectly pay it.”²

In the above quotations, we have substantially all that Mr. Spencer has to say respecting principles of taxation, although the same ideas are several times repeated in his different works. And the sum and substance of the principles that Mr. Spencer finds deducible from his theory of the state are, that the tax should be proportioned to benefits, and should be universal. But since Spencer, with Von Hock, distinguishes between the protection of the person and of property, and consistently so, there must be one universality for persons and another for property.

We cannot stop here to enter into a criticism of Mr. Spencer's theory of the state which he assumes as the basis of his principles of taxation. For us the question is: Are these principles logically deduced, and are they consistent with the demands of justice? Or we may ask: Is this theory of the state itself capable of supplying principles that satisfy the highest demand of justice?

1. Mr. Spencer deduced his principles from his theory of

¹ *Justice*, pp. 198-9.

² *Ibid.*, p. 194.

government as a "a joint-stock and protection-society"—from his theory of the functions of government; not from his his theory of the evolution of the state—not from the nature of the state itself. And assuming the same functions, he arrives at the same conclusions as those who hold to the contract theory, or to the protection theory of the state—the theory of benefits and universality. But we maintain that neither his theory of the functions of government, nor his principles of taxation, are necessary deductions from the evolution theory of the state. For if society is a "growth" and not a "manufacture,"¹ the same must be true of the state, for Mr. Spencer does not distinguish between the state and its government, and thus to assume that the state goes on developing while its functions remain constant, is to contradict himself, and to assume for the state dynamic, and for the government static conditions. It means, further, that while evolution is recognized as the all-controlling social force, yet arbitrary limits may be assigned to it; that after all, it is the preconceived notion of what ought to be, and not the actual trend of evolution, that has formed the basis of conclusions. It is true that Mr. Spencer's individualism has given color to this theory of governmental functions, but it is not consistent with his theory of the ultimate end of the state to assign arbitrary limits to the functions of its government, the agency through which it must realize its end.

The same criticism may be applied to the principles of taxation. For if there is any truth in this theory of evolution, the principles of taxation must vary from time to time with the progress in social evolution, conforming to existing ideals and standards of society. Again, if we recall that all evolution, according to Mr. Spencer, is a product of external, material forces and laws, the *non sequitur* of his conclusions becomes even more apparent. Whether, on the theory

¹ Cf. *Justice*, p. 247.

of evolution, a tax should conform to benefits and be universal, must depend upon whether the evolution of the state is best promoted by an application of these principles. Nor does the theory of evolution, in itself, afford any *a priori* reasons in support of these principles.

For a criticism of these principles as deductions from Mr. Spencer's theory of the functions of government we may refer to the preceding discussion.¹ But to this we may also add, that however true it may be that the protection of life has an equal value for all, it is by no means self-evident that the benefits derived from the protection of property are proportional to the amount of property protected. Indeed, the opposite conclusion has more reason. Still more, the protection of property affords benefits to the propertyless as well as to the property holders, though in a less degree.

2. As to the ethical character of the principles, we may refer again to the preceding discussion,² where it is shown that while the principle of universality is true as a general principle it nevertheless requires exceptions; and that the principle of benefits is lacking in important ethical considerations. But more than this, we maintain that Mr. Spencer's theory of social evolution does not afford a sufficient basis for ethical principles of taxation. The conception of a state as composed of individuals who are little more than abstractions of the individual as he is in actual life, and of relations that are little more than artificial and mechanical, are not conceptions to give a basis for ethical principles. No theory, indeed, can meet the requirements of ethical demands that does not conceive of the individual as a self-realizing spiritual entity—a person; as also having a social nature which is such a vital part of himself that apart from it he has no reality as a person. For only with such a conception can the relations of individuals to each other in society be rightly

¹ See *ante*, p. 73 *et seq.*

² *Ante*, p. 75 *et seq.*

understood, or ethical principles deduced. Material agencies may issue in conduct, but not in moral conduct. In brief, a philosophy of taxation, like a philosophy of the state, must, as we have before observed, take into consideration the whole man.

But such is not the case with the theory of evolution in question. Principles of taxation that follow from it must result from the law of the "survival of the fittest," must be such as are best adapted to the conditions of social life, and to the economic conditions, as they at any time exist. It is true that such a result may be contained in the principle of universality; but it is equally true that those conditions might be met only by a modification of the law of universality—by means of exceptions; while under Mr. Spencer's assumption the law of universality admits of no exceptions. The benefit principle, however, cannot conform to such conditions, since it is not capable of practical realization, as there is no justification for the assumption that benefits are proportioned to the amount of property.

Finally, it may be added that Mr. Spencer's theory of taxation is not consistent with his theory of a social organism. For if the state is an organism (as he maintains in spite of his own refutation of the doctrine), taxation should be based upon the economic ability of the individual, apart from any personal needs; other, at least, than those of the necessary minimum, since as a member of the organism he must exist and act to the extent of his capacity for the whole, and not for himself.

III. THE UTILITARIAN THEORY OF THE STATE AND TAXATION.

While almost any theory of the state possesses certain utilitarian characteristics, there is nevertheless a distinctively utilitarian theory based upon utilitarian ideas; and while

utilitarian principles have been applied to taxation mainly from an ethical or an economic point of view, there is an underlying basis in a utilitarian political philosophy. It is this latter point of view, as furnishing a basis for principles of taxation, that I wish to consider here. In doing so I shall confine myself to Mill and to Sax, though the former considered the question more from an ethical, the latter from an economic point of view.

1. *The Theory of Mill.* According to Mill mankind is of such a nature that every individual seeks the greatest possible amount of pleasure and the avoidance of the greatest possible amount of pain, the ideal aim of life being "the greatest happiness of the greatest number."¹ Now this ideal is most nearly realized when every individual is given the fullest liberty to act according to his own impulses and beliefs, subject only to the like liberty of others.² It is in the maintenance of the conditions essential to this equal liberty that the utility of a government consists. That is, the utility and sanction of government consists in its usefulness to the ends of the individual, a utility, therefore, that is "grounded upon the permanent interests of man as a progressive being." And it is because these interests cannot be realized through an independent life that they "authorize the subjection of individual spontaneity to external control, but only in respect to those actions which concern the interests of other people." But such a common interest is limited to the maintenance of the conditions of the free activity of the individual, in a word, to self-protection. Indeed, says Mill, "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection."³ With the functions of

¹ Cf. Mill, *Utilitarianism*.

² Cf. Mill, *On Liberty*, ch. 3 and 4.

³ *On Liberty*, Introduction.

government thus directed, but also thus restricted,¹ there is developed the highest individuality, and by implication the greatest happiness of the greatest number.

It will be noted that Mill arrives at the same conclusion as Spencer respecting the functions of government; and we shall see that he also arrives at essentially the same principles of taxation, derived, as with Spencer, from the relations of the individual to the functions of government, but also with the ethical ideal uppermost in mind. For with Mill the protection that guarantees equal liberty of performance, of the development of individuality, and so of the highest happiness of the individual and of mankind, is of interest to all since all are benefited by it. And hence, "every one who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest." And among other things, this "line of conduct" consists "in each person bearing his share (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation."²

But how, according to Mill, is the "share" of each to be determined? It must, he says, be upon some "equitable principle," and such a principle he finds contained in the idea of "equality." Equality is regarded as the basic principle of government, whose chief function it is to maintain equal liberty in the enjoyment of pleasures,³ and equal con-

¹ In his later life Mill did not so restrict the functions of government, though he did not change his utilitarian ideas or his principles of taxation. Cf. for example, his *Autobiography* and the later editions of his *Political Economy*.

² *On Liberty*, ch. 4.

³ With Mill "pleasure" is not merely Hedonistic, sensual, but it is a "happiness" that includes intellectual pleasures, and which, indeed, with doubtful consistency, Mill makes the highest pleasure. Cf. Mill, *Utilitarianism*; and Green, *Prolegomena*, p. 168 *et seq.*

ditions in the avoidance of pains. Therefore, for the labor and sacrifices incurred in maintaining these equal liberties and conditions there should be an "equality of sacrifice" on the part of those benefited; or "equality of sacrifice" should be the guiding principle of taxation. That is, the government should "apportion the contribution of each person towards the expenses of government so that he shall feel neither more nor less inconvenience from his share of the payment than every other person experiences from his."¹

We shall postpone for future discussion the merits of this principle as an economic or an ethical principle and inquire here, as in the case of the preceding theory, whether the principle is consistent with the theory of the state upon which it is founded, and whether this theory of the state is adequate to the determination of satisfactory principles.

1. The theory of Mill, at the outset, has the advantage over either of the preceding theories in that it assumes an ethical end in the purpose of the state, and involves ethical relations among individuals as they exist in society, whatever may be said of the ethical end in itself. Granting, however, the ethical ideal, and also the assumption that the ideal is best attained by the maintenance of an equal liberty of individual action, of individual direction of one's activities—one's emotions and ideals—and equality would rightly seem to be the justly dominating principle of social life. Hence, also, it is that in the maintenance of the conditions of equal liberty there should be an equality of individual sacrifice corresponding to the equal benefits derived from the equal liberty. As individuals share equally in the benefits, so also should they share equally in the sacrifices necessary to obtain them.

It is further not only consistent with the theory of Mill,

¹ Mill, *Political Economy*, bk. v., ch. 2, § 2.

but also its merit, that it fairly solves the problem of absolute and relative equality, the absolute equality being of a subjective, the relative equality of an objective character. For with respect to the property enjoyed under the protection, or guaranteed liberty, of the government, there is only a relative equality of benefits, and so there is and should be only a relative equality in the goods given up for the support of the government; but with respect to the conditions of liberty in the free use of our faculties, so far as the government is concerned in them, there is an absolute equality of subjective interest, and hence there should be an absolute equality of subjective sacrifice for the maintenance of those conditions. Such an equality is found in Mill's subjective "equality of sacrifice" as the norm for the distribution of taxes.

(2) But apart from the question whether equality of sacrifice is the ideal norm of taxation—a question to be considered later—the utilitarian theory of Mill is otherwise defective. True, he rightly considers the question from the point of view of the ultimate, and not the immediate, end of the state, and therefore escapes the criticisms passed upon the protective theory. But the faults of the theory arise mainly from the defectiveness of its ethical standard which we shall have occasion elsewhere to criticise. Besides, the theory is further defective in that its ideals and results are essentially of a subjective character, and so are incapable of the necessary quantitative determination. Nor would it be easy to find in the Greatest Happiness principle any definite standard for deviations from the rule of universality in the tax obligation for the maintenance of the conditions of equal liberty. And there would be the same difficulty in determining these exceptions on the principle of equality of subjective sacrifice.

2. *The Utilitarian Theory of Sax and the Austrian School.*

A far more elaborate attempt to place taxation upon utilitarian principles is to be found in Sax and the Austrian school of economists.¹ But with them the theory loses its ethical character and assumes a distinctly economic form. Yet the theory is founded upon the utilitarian principle of pleasure and pain, a principle that it is assumed applies equally to the collective and to the individual life. That is to say, pleasure and pain are supposed to determine collective activity in precisely the same way that they determine individual activity. And, indeed, the collective life has the same end in view—the increase of the sum total of pleasure; and, further, it exists to promote this end wherever it is more competent than individual action.

As worked out by Sax the theory, in brief, is as follows: Man is a creature of wants—sensuous and intellectual, moral and religious, social and economic, etc., etc.—whose satisfaction with the least possible pain, or sacrifice, to himself is the aim of his life. Of these wants, infinite in their variety, some are satisfied by the individual directly, others by the associated or collective action of individuals. The former are called collective wants, the latter individual wants. Of the collective wants, which alone concern us, some are satisfied by voluntary associations within the state, others by society as a collective whole, organized as a body politic—by the state itself. But however satisfied, the ruling principle of all wants is: the greatest possible satisfaction with the least possible effort—with the least individual sacrifice.

Now this principle not only determines all collective action but also what action shall become collective, that is, the func-

¹ Sax, *Grundlegung der theoretischen Staatswirtschaft*; also, *Die Progressivsteuer*; Wieser, *Natural Value*; Ricca-Salerno, *Scienza della Finanza*; Flora, *Scienza delle Finanze*. The work of Sax is profuse and difficult; that of Ricca-Salerno brief and clear. A very good statement of this theory is given by Flora in the *Rassegna*, for August, 1893, in an article entitled, *Il Concetto della Economia Finanziaria*.

tions of government. These functions extend to the satisfaction of all wants that could not be satisfied by individual effort, or if so only by a greater sum total of individual sacrifice. These wants have no absolute restriction but are relative to the conditions of a given civilization, to the convictions of a people. As Flora says, "The measure of the action of a state is a product of the wills of its members,"¹ but wills that are determined by ideals of pleasure and pain.

That is to say, collective wants of whatever kind are determined by the law of satisfaction common to all wants, a condition that follows from the nature of the individual and of society. For collective want, in its last analysis, like all want, necessarily pertains to psycho-physical organisms and not to a personified collective being that has only mythical existence. Hence, collective action, like individual action, must be determined by the law of greatest utility and of least disutility, in a word, by the law of "marginal" utility. Hence, also, the same law must determine principles, or more strictly laws of taxation.

In this simple law of the satisfaction of want Sax thinks that he has found the key to the solution of the whole problem of true principles of taxation, and, indeed, in its simplicity he finds a guarantee of its validity.² But Sax does not discover any new principle from this law of utility, for his "equivalence of burdens," which he deduces from the law of marginal utility, is in reality nothing but Mill's "equality of sacrifice," in spite of the assumption to the contrary. Indeed, Sax sums up his principle in almost the exact words of Mill; for his principle of taxation is: that "every individual should value the goods taken from him as highly as every other individual values those taken from him."³ In other words, the marginal utility of goods taken

¹ *Op. cit.*, p. 8.

² "Die Einfachheit der Lösung ist eine Bürgschaft ihrer Richtigkeit." Sax, *op. cit.*, p. 308.

³ *Ibid.*, p. 514. See *ante*, p. 88.

as a tax should produce an equivalent sacrifice. Yet in his method of treatment Sax differs quite materially from Mill, particularly in relation to collective wants and in confining himself solely to the view-point of economics. For with Sax the political basis is put into the background, while the ethical is considered as having no place in determining principles of taxation, since taxation has to do with what is and not with what ought to be.

A criticism of the theory of Sax must, therefore, be made in connection with the economic basis of taxation. But with respect to the political basis it may be observed, that if we grant the primary assumptions of Sax his conclusions would seem to follow. We cannot, however, concede that the economic law of marginal utility, based upon self-interest, determines collective action in precisely the same way that it determines the economic action of the individual; nor that economic laws take precedence over ethical considerations in the determination of principles of taxation; or that ethical principles are nothing but the results of the action of economic laws, as is virtually assumed by Sax. And because of the faultiness of these assumptions the political basis fails as a basis for principles of taxation. The theory is, further, like Mill's too subjective, too abstract. We postpone further criticism.

But whatever criticism may be passed upon the theory of Sax it must be admitted that his general views are not only suggestive but also contain much truth. The chief merits of his treatment are: Its conception of the state, as a social organization essential to the highest development of the individual, and yet not itself a social organism; its recognition of the flexibility and the relativity of collective wants, and therefore of the functions of government; its rich suggestiveness in making the philosophy of taxation a part of the general philosophy of human wants; its emphasis upon

the satisfaction of wants, rather than upon the benefits of government, as the measure of taxation; though by failing in a due recognition of the ethico-social nature of collective wants, and so of the implications involved therein, he fails to discover the true norm that should determine their satisfaction.

IV. SOCIAL THEORIES AND TAXATION

We have thus far treated of theories that pertain to historical or actual forms of state and government, and it may be well before closing the present chapter to say a word respecting the character of taxation involved in such ideal social theories as anarchism, communism and socialism. True, such theories may not be able to throw much light on principles of taxation that are consistent with prevailing notions of the political state, since the total abolition or the complete transformation of such states is a part of their scheme of taxation. And yet they are not wholly without their lessons in their conceptions of the nature of individuals, their relations to each other in society, and their mutual obligations in their associations with each other.

1. *Anarchism.* Nominally under anarchism there is no state, but only voluntary associations. Force as a coercive, collective power, is completely wanting. All association, and therefore all political association, must be voluntary, else there would be a denial of individual liberty; and for the same reason all support of these voluntary associations, of whatever sort, must likewise be a voluntary support. Membership in the association, and therefore support of it, is permanent or temporary according to the choice of the individual.

Under such a social system the conscience, or the ethical standard, of the individual must be the sole determinant of the amount of individual contributions, as no force can be applied. Should an association forbid membership to any

individual, or enforce contributions as a condition of membership, it would defeat its own purpose and repudiate its own notion of individual liberty. Yet, until the millennium appears, or so long as human nature remains as it is, enforcement of contribution, and the determination of the proportionate share of each, is inevitable. The conscience of the individual can not, as yet, be trusted to determine his share of the necessary contributions. Nevertheless, the anarchist view has its lesson in its emphasis upon the voluntary side of political society, and upon the ethical character (at least by implication) of the obligation to contribute for its support. And yet there is only a half-truth in this doctrine. There must be a social determination and a social enforcement, else the association must cease to exist.

2. *Communism.* Communism in its objective form is little more than the constructive side of philosophic anarchism.¹ As with anarchism political and industrial society are organized in one common Association, but while the association is voluntary, communistic ideals do not preclude the enforcement of its laws. Communism, further, finds a definite principle of association in the idea of the brotherhood of man, from which it deduces as a principle of collective activity: "From each according to his ability, to each according to his needs." This principle which should actuate all social effort must also control the contributions which it involves. True, technically speaking, there is no taxation in a communistic society, since the officers of the community share in the product on the same basis as the producers. But the support of the officers, and the provision of the material wants of the government from the common product is as much taxation as a direct levy upon the property or income of the individual; for in either case the support of the government comes from individual labor and

¹ See Benjamin F. Tucker, *Instead of a Book*.

effort, from the giving up of the results of one's own labor to the community. And since the common fund is the result of the combined labor of the whole, each producing according to his ability, the burden of the support of the community is necessarily proportioned to the ability of its members. Here we virtually have "universality" and "ability" as the two cardinal principles of taxation, deducible from the nature of the social organization and the ethical ideal upon which it is founded—the brotherhood of man. These principles are both consistent and sound. The error of communism lies in the assumptions which it bases upon the idea of a common brotherhood, particularly with respect to the nature and character of the collective life. It exaggerates the communal idea as anarchism does that of the individual. Its great merit is the emphasis it places upon the ethical side of social life.

3. *Socialism.* So many social ideals are included under this caption that I must confine myself to that type of socialism that is known as Scientific Socialism, or Collectivism—the socialism that would abolish political states—the *Polizei-Staat*—and establish in their stead industrial states, which are to own all the means of production and to direct and control all industries. Under such a system, it is assumed, there will be no occasion for the exercise of police powers, and the state will have only economic functions to perform. Yet every individual must be guaranteed an equal opportunity in the satisfaction of his economic wants. Such guarantee, however, is supposedly fulfilled by the system itself, which offers the same opportunity to all to make use of the means of production. That is to say, the equality, which it is assumed is the fundamental human right, and the basic principle of the state, is an "equality of opportunity," an equality of use, not an equality of possession. Hence the quantity of goods acquired by each individual for the

satisfaction of his wants should depend upon his ability and inclination to labor, as in the system of Rodbertus; but in the less just system of Marx it depends upon the "average labor time" necessary for the production of commodities. And the same principle that determines the share of each in the common product, must determine, also, the contributions of each to the common reservoir, the common fund, out of which the shares are distributed.

But the government is also maintained out of the common fund. Upon what principle, then, is the burden of supporting the government distributed? Necessarily, the share of the common burden must depend upon the portion that each contributes to the common product. In other words, the distribution of the expenses of the government will be relative to the standard of private wants and the degree of their satisfaction; or, in brief, upon the use that one makes of his opportunities. Nominally, then, the principle of sharing the common expense—for there is no taxation—is the ability to satisfy private wants, or rather to provide the means for their satisfaction. But more strictly, the principle is that of economic benefits, the contribution of each being proportioned to the actual use made of the economic opportunities afforded by the government.

Upon the assumption of the socialistic conception of the state this conclusion cannot be gainsaid. It is logical and just. But there is not the same theoretical justice in the distribution of the burden upon the basis of the "labor-time" theory of Marx, since those having less than the average capacity of production are credited with more than they actually contribute, while those having a capacity above the average are credited with less than they actually contribute. The former receive benefits that are in excess of their power of production, and so of their contribution to the common fund; the latter receive benefits that are less than

their product, or their contribution. On the other hand, with no type of collectivism is there any exemption allowed for those who are capable of producing, but only for the incapables—the physical or mental incapables. Those who are able to produce must do so or starve, and must therefore contribute to the common burden in the same proportion that they satisfy their own economic wants, whether or not these wants are satisfied according to the ability of the individual, or the average ability of individuals. So that from this point of view the contribution may be regarded as based upon the ability of the individual as measured by actual product, or by the average ability of individuals as measured by their average product. That is, the ability is determined by the power of production, and not by the necessities of consumption; and therefore there can logically be no exemption based upon the needs of the individual, apart from his incapacity.

If we consider this theory of public contributions from the point of view of benefits, we find that it is defective in that it confines benefits to the purely economic benefit of equal opportunities for production; and if we regard it from the point of view of ability we find it defective in so far as it confines ability to the ability to produce. But the real defect of the socialistic system of taxation, if we may be permitted to use the term, lies in its fundamental conception of a purely economic state, and in its conception of justice as consisting solely in the economic equality of opportunity. Its important lesson is, perhaps, its emphasis upon the social character of production, upon the joint interest of the members and of the collective whole of society in the social product, and upon the joint responsibility in the maintenance of the government. But it views the relations of the individuals to each other and to the state too entirely from an economic point of view, and, indeed, from the point of view of production alone.

With respect to the principles of taxation state and *Katheder* socialism are not essentially socialistic, as they would not wholly convert the political into the industrial state, nor equalize the burdens of government by equalizing the opportunities of production. They are specially characterized by the emphasis they give to the ethical side of social life, from which they justly deduce as a principle of taxation the ability of the individual to pay; and hence also are given a wider range in considering the problem of exemptions. The social side of their theory—the distribution of wealth—is a problem of political policy, and not of taxation.¹

V. CONCLUSIONS AS TO TRUE POLITICAL BASIS AND PRINCIPLES OF TAXATION.

In the preceding discussion of political theories relative to a political basis of taxation, we have attempted to touch only upon such theories as have exercised the greatest influence, either theoretical or practical, in matters of taxation, together with a brief reference to social theories that antagonize the existing state. Of the latter class we found that while they contain important truths, they are but half-truths at the best; and further, their lessons have little practical significance since they have not to do with actual conditions, but with ideals whose consummation must wait for the dawn of the millennium. Or again, they make false applications of principles that are true in themselves.

In the theories of the first class many important truths were also found, but we were unable to find in any of them a consistent and logical development of principles directly deducible from the political basis that formed their primary assumptions. Besides a lack of logical development we found, also, an omission of important factors in the problem. But what to our mind constitutes their fundamental defect, is

¹ Cf. Vocke, *Die Abgaben, Auflagen und die Steuern*, p. 476.

their conception of the nature and purpose of the state in its relation to the individual; together also with a deduction of principles from the immediate functions of government instead of from the ultimate ends of the state.

The political basis of taxation is simply a conception, or theory, of the state in which is found the justification and character of taxation, and from which principles of taxation logically and naturally flow. Such a theory must comprehend not only the nature and end of the state, but also the nature and end of the individual, as *person*, since each is the counterpart of the other and by itself is but an abstraction. But man, as an end in himself, is essentially and fundamentally ethical, and hence principles that govern taxation, as also all social relations, should conform to ethical standards and ideals, and at the same time should conform to the political conception upon which they are based.

The theory of the state outlined in the preceding chapter, it is believed, answers these requirements. It recognizes the obligation of the individual and the rights of the state, the voluntary and the compulsory character of taxation; it recognizes the universal dependence upon the state for the highest individual development, and thereby inculcates the principle of "universality" in taxation; it recognizes the ethical nature of the individual and the ethical nature of social relations, and thereby inculcates the principle of equity, or "equality" in taxation as its highest principle. These, Universality and Equality, are, in fact, the cardinal principles of taxation deducible from a political basis—from a true theory of the state—and may, therefore, be called the political principles of taxation. All other principles are but modifications of these. These two principles, indeed, are, with greater or less logic, found in all theories of taxation, but all theories do not find a sufficient basis in their conception of the state for the modification, of these principles that

are necessitated by economic and ethical considerations. A basis for the modification and limitation of these principles is, however, to be found in the theory of the state that we have upheld as the basis for all principles of taxation. The cardinal principles are in themselves abstract and general in character, and result from the viewpoint of the general relation of the individual to the state. But in their concrete application the actual conditions of life, with reference to ethical aims and standards, must be considered, the necessity of this consideration resulting from the ethical nature of the individual and the state, such as we have conceived them to be. In brief, the modifications of the two primary principles, universality and equality, no less than the principles themselves, are, as they must be in every consistent theory, the necessary implications of the conception of the state, and result naturally from the logical development of these implications. The main problem, now, is to determine the basis and character of the equality, and the limitations that are to be put upon the principle of universality. These can not be determined by the purely political aspect of the question, but only by the economic and ethical aspects. These aspects we shall consider in the two following chapters.

CHAPTER V

THE ECONOMIC BASIS AND PRINCIPLES OF TAXATION

As a theory of the state implies taxation, so taxation implies the economic relation of the individual to the state. A political basis and political principles of taxation imply, therefore, an economic basis and economic principles. By an economic basis, then, is understood the economic relation that the individual sustains to the state; and by economic principles the principles that should determine the portion of private wealth that each individual should contribute to the ends of the state, or the relative satisfaction of private and collective needs. The question is not directly concerned with the economic effects of taxation, although these effects are indirectly involved. The economic basis and principles of taxation are, in part, an interpretation, and, in part, a modification of the political basis and political principles.

The economic aspect of the question is not, therefore, an independent problem, but simply one phase of the problem of taxation, though, indeed, a very important phase. Indeed, its importance has led some economists to consider the question of taxation as though it were wholly an economic one, to be determined by the simple application of economic laws. Taxation is treated as though only the economic relations of individuals to the state were involved. In the political basis they see only an economic basis, and in the political principles only economic principles. Indeed, it is expressly or tacitly implied by them that the application of

economic principles and laws will in all cases best attain the ends of justice. Taken by itself, however, this is but a superficial view of the problem. For, in the taking of economic values for its support and maintenance—the execution of its functions—the state, through its government, enters into a most vital relation with the individual; since the source of the economic values taken by the state is likewise the source of those values that go to the maintenance of life, and of the material conditions that are necessary to the development of human personality. This vital relation, then, is something more than an economic one. Because it relates to a *person*, and so to an ethical being, it has ethical as well as economic importance.

However, there is an economic side to the question which may be abstracted from other relations, just as in a theory of knowledge sensation, perception, judgment, etc., may be abstracted from the unified process that alone makes knowledge possible. The state must ultimately determine, as it is ultimately responsible for, the amount of those values that are diverted from the satisfaction of private wants to the satisfaction of collective wants—the needs of the government. It is, therefore, important that there should be a definite understanding of the economic basis and economic principles that should control this distribution.

In the present chapter we shall attempt to consider this economic aspect of the question of taxation. In doing so we shall not only review such theories as would solve the problem wholly along economic lines, but shall consider the economic side of other theories. As these theories differ, in the main, according to different conceptions of the character and importance of different departments of economics—as Production, Distribution, Exchange and Consumption; or according to different conceptions of economic theory and economic laws, we shall consider the subject under these

several heads, using different economic theories as main divisions.

I. THE PHYSIOCRATS AND THE SINGLE TAXERS.

It was the theory of the first school of scientific economists—the Physiocrats—and is the theory of their modern representatives—the Single Taxers—that the whole expense of government should be met out of the proceeds from the land, from the *produit net* or the “economic rent.” Let us attempt to ascertain the economic basis and the economic principles underlying this theory. Although they reach practically the same result we shall find that the earlier and the later representatives of this theory employ somewhat different lines of argument.

1. *The Physiocrats.* According to the doctrine of the Physiocrats land alone produces a *produit net*, a net surplus above the expenses of production; therefore upon whatever form of property or income a tax may be imposed its ultimate incidence must be upon this *produit net*, as otherwise production must cease and starvation follow. Hence, to avoid unnecessary expenses of collection and added costs due to the advancement of the taxes, all taxes should be imposed in the first instance upon the landed proprietors.¹ Moreover, as only the proprietors of land obtain a net product, they are the only class that has any interest in a stable government. Indeed, a net product and a stable government mutually condition each other. For “without good government and tranquility there will be no net product, and without a net product no government and no society.”² Security and tranquility increase the revenue of each. Because, therefore, of the mutual interest and mutual dependence of proprietors and the government they should share about equally in the net product.³

¹ Cf. Turgot, *Works*, vol. iv, p. 306.

² Quesnay, *Despotisme de la Chine*, ch. 8, sec. 20.

³ Cf. Quesnay, *Ibid.*

The doctrine of a *produit net* as applied to taxation is most fully developed by Turgot who assigns several reasons for a single tax on land. His argument we may summarize as follows: The object of a tax "is for the preservation of property, not to lose it,—and hence should be upon income, not upon property;"¹ but "the proprietor of land is the only one who has a true income"—a *produit net*—and therefore "he alone has an interest in preserving the permanent order of society," for to the industrial class any change of ownership would be but a change of employers.² The tax should, therefore, be paid out of the "true income," and to force it from any other income, or to make it exceed this income, would check production and so dry up the source of the revenue of the state.³ Moreover, any other tax is always shifted to the proprietor by being added to the cost of production;⁴ and to cause the laboring and industrial classes to advance the tax is to produce their ruin, since they have no disposable income.⁵ On the other hand, "it is impossible to make the consumers, who are not proprietors, pay a tax upon consumption, because from the moment it is established they are forced either to restrain their consumption or to diminish the price which they can offer for the production which they consume; and because either method will throw the tax upon the producers, or sellers, of those productions."⁶ Finally, a single tax on the produce of land is demanded because an indirect tax—that is, any tax except that upon the *produit net*—leads to frauds, condemnation of goods, loss of the labor of the great number of men who are necessary to collect it, a war of the government with its subjects, a disproportion between crime and punishment, and "attacks liberty in a thousand ways."⁷

Thus we find that according to the doctrine of the Physio-

¹ Turgot, *Works*, vol. iv, p. 215.

² *Ibid.*, p. 216.

³ *Ibid.*, p. 220.

⁴ *Ibid.*, p. 306.

⁵ *Ibid.*, p. 313.

⁶ *Ibid.*, p. 363.

⁷ *Ibid.*, p. 208.

crats the economic basis of taxation lies in the relation which a certain class of society sustains to the government. This class is that of the landed proprietors who alone can have any interest in the government, since land alone produces a net product over and above that which is necessary in order that there may be any production at all. But as the net product that attaches to land would not exist but for the government, the landlord should share it with the government in the form of a tax. Not only has no other class any interest in the government, but the net product of land is the only fund out of which a tax can ultimately be paid. As the net product is equally conditioned by landlords and the government we have, further, as the principle of its distribution, as the economic principle of taxation, that the net product should be distributed equally between landlords and the government. Or, as the basis of the tax is the economic interest which the proprietors of land have in the government, the principle of its distribution is the extent of the interest in the joint economic result—the *produit net*—which is assumed to be a half interest.

Criticism of this theory may be brief. Not only is its theory of incidence utterly erroneous,¹ but so also is its theory of a net product² upon which its theory of taxation rests. Other factors of production than land yield a net product upon which a tax may ultimately fall, and which is equally with the net product from land conditioned by the existence of government. It follows, therefore, even from the view-point of the Physiocrats, that other classes than landlords have an interest in the government, and that the government has interest in other products than the net product from land. Moreover, because a government is a condition of a net product, or for that matter of any product, it does

¹ See, for example, Hume, *Essay on Taxes*.

² See Adam Smith, *Wealth of Nations*, bk. iv, ch. 9.

not follow that the product must be distributed between the producer and the government on the basis of the share of each in its production. Indeed, if this were so the government might claim the whole product beyond the barest necessities of life. Because a government conditions production it is not therefore a factor in production in the sense that it should share in the product in proportion to its interest in it. The fact is that the income of government bears no relation whatever to its part in production. Its income, and therefore taxation, depends upon its character and upon the functions it assumes. And whether or not a tax should be determined according to the principle of interests, it certainly is not to be determined by any joint interest in an economic product. But above all, government does something more than condition production. It is the condition of the satisfaction of all of our wants, and therefore interest in it is general and not special; and for the maintenance of these general interests—the interests of civilized life—government requires economic support from every citizen of the state.

2. *The Single Taxers.*—The doctrine that the whole expense of government should be met by a single tax on land was revived in more recent years by Henry George¹ whose doctrine is now known as that of the "single tax." By its modern advocates, however, the argument for a single tax takes on a somewhat different form from that of the Physiocrats. By George and his followers the justice of a single tax rests upon the Ricardian theory of rent; only emphasis is given to the social factor as producing differential advantages that give rise to the phenomenon of rent, quite as much as do differences in natural advantages. This rent is akin to the *produit net* and is called the *unearned increment* of land. But land is the birthright of man, a "gratuitous

¹ Henry George, *Progress and Poverty*, 1880.

gift of Nature to men, the free bounty of the Creator to his children."¹ Therefore, the *unearned increment* from land, the whole increment that is not produced by the labor of any given individual, belongs to mankind, to society, and should not be monopolized by any one or several individuals.² Indeed, the government has a double claim upon the unearned increment: both because the land belongs to society, and because a part, at least, of the unearned increment is due to society, or is produced by it. Moreover, government has no right to touch any part of the increment of production that is due to human labor, since by "natural law" the product of one's own labor belongs to himself. "Whatever a man brings forth, whatever he adds to the common stock of wealth, belongs to him alone; and it is wrong to take from him any part of it."³

According to this view of the single tax, there is in reality no taxation, as the government simply appropriates to itself the wealth accruing from natural advantages and from social growth—wealth to which the individual has no valid claim, but which of right belongs to the people as a whole, that is, to their government. But as the *unearned increment* comes first into the hands of individuals—the landlords—the taking of it from them by the government may be regarded as nominal taxation, the landlords being the natural tax collectors.⁴ The economic basis of the tax thus comes to be the relation subsisting between the government and the individual arising from the possession on the one side, and the ownership on the other side, of the source of unearned increment.

As the privilege of possessing the source of the unearned increment is regarded as an advantage to its possessor, it is laid down as a principle of taxation, that "we ought to tax

¹ George, *Single Tax Discussion*, p. 76, Saratoga, 1890.

² Cf., *Ibid.*, p. 83.

³ *Ibid.*, p. 79.

⁴ See Shearman, *Natural Taxation*, pp. 118-9.

men according to the special advantages they receive from the community, thus putting all men on an equal plane."¹ This is the principle of taxation according to benefits, and is common to all "single taxers," who repudiate the principle of ability as unjust or as an appeal "to sentiments of benevolence and philanthropy."² The principle is purely an economic one, as the "advantage" is measured by "the market value of the benefits conferred by government and by human society,"³ the market value of ground rent. As the benefit is measured by the extent of the ground rent, and is "conferred by government and by human society," the tax, according to George, should absorb the whole increment of land that is not due to human labor; but Shearman, assuming that such a tax would be in excess of the needs of government, less consistently holds that the government should take only such part of the ground rent as it needs, leaving the rest to the landlords.⁴ If, indeed, it is true that the whole ground rent, the unearned increment, belongs of right to the government, it is difficult to see the justice of any part of it being retained by any class of society. The only just method of distributing the surplus would be to distribute it *pro rata* to every member of society.

That the doctrine of the "single tax" has the merit of simplicity cannot be doubted, nor that it contains some desirable features.⁵ We must, however, discredit its claim as a *panacea* for all social ills, as the fanciful dream of an enthu-

¹ George, *Single Tax Discussion*, p. 83. "There can be but one strictly just basis of taxation, and that is the basis of benefit received from the taxing power;" Shearman, *op. cit.*, p. 228.

² George, *Ibid.*, p. 82, and Shearman, *Ibid.*, p. 227.

³ Shearman, *Ibid.*, p. 229.

⁴ Cf. Shearman, *op. cit.*, pp. 132-135; and also ch. 10.

⁵ See Prof. J. B. Clark, *Single Tax Discussion*, p. 5.

siast.¹ Nor can we grant that the "single tax," as a theory of taxation, solves the problem of justice. Granting the validity of the theory of social values, and assuming its sufficiency for purposes of public revenue, we would still have the following criticisms to offer to the theory, as a theory of taxation:

(1) It assumes as an economic basis for taxation, that only one class in society bears such an economic relation to the state that there rests upon it the obligation to support the government, to pay taxes, to wit: the proprietors of land; whereas, in point of fact, the economic relation and the consequent obligation rest upon every class of society, upon every citizen of the state. (2) Not only does the theory assume a limited economic relation, but it assumes as the basis of this relation that land alone yields an unearned increment, which, while it belongs to society, or to government, comes in the first instance into the hands of the possessors of land; whereas, land is not the only source of an unearned increment—a rent or a *quasi*-rent—that arises from social conditions, and therefore the rent of land is not the only wealth, or source of revenue, which comes into the hands of individuals, but which, according to the single tax doctrine, belongs to the government. Apart from the question of a *quasi*-rent in other factors of production than land,² there are legal and capitalistic monopolies that produce unearned increments quite as much as does the monopoly of land. Moreover, there is no form of industry that is not benefited by social growth. (3) It is further assumed that the advantages of government lie in the possession of the source of the unearned increment, and that this advantage

¹ See George, *Progress and Poverty*, B. ix, ch. 4; also, Shearman, *Natural Taxation*, ch. 13.

² On this point, see Marshall, *Principles*, B. vi, ch. 7; and Hobson, *Economics of Distribution*, ch. 5.

is the only ground for the imposition of a tax; and therefore, that a tax according to the benefits received from the government is the true principle of taxation. But as other factors than land possess these advantages (which are made the basis of taxation) it is difficult to see by what justice the possessor of land alone should pay for the advantage of obtaining an unearned increment. Besides, there are other economic advantages produced by the state that equally demand a recompense—as the maintenance of the social conditions necessary to the pursuit of a livelihood. Moreover, in assuming that the unearned increment is the price of a special advantage it is assumed that the advantage is proportioned to the amount of the increment, a position whose absurdity is at once seen when we reflect that the ultimate advantage is confined to the privilege of gaining a livelihood. Then, too, this privilege is common to all. More than this, there is in reality no payment for any special advantages, as the government simply takes the unearned increment, and upon this the landholder has no claim. (4) In fact, it is a special feature of this theory that no individual should undergo any burden of sacrifice for the purpose of maintaining a government; that, indeed, the government has no right to touch any part of private wealth that results from one's own labor, but should support itself on the economic values that belong to society as a whole, which is to assert that there should be no taxation. But such an assumption is opposed to any rational conception of the nature of the state, and misconceives the nature of the "natural right" to the product of one's own labor, since the payment of a portion of this product to support the government is a condition of its own existence. Yet, in the first instance, a tax is imposed upon the present holders of land who are made to pay penalty for the sin of past governments in permitting private property in land—a species of confisca-

tion, in spite of all refinements upon the word,¹ that is repugnant to all sense of justice.

Various other forms of a single tax have been promulgated by different writers, though not so much from any peculiar notion respecting the relation of the state to the economic life of its members as from the conviction that a single tax best realizes the ideal of a tax according to ability. Such theories belong to the discussion of systems of taxation, and need not be dwelt upon here. There is one theory, however, that may be briefly touched upon, as it assumes a certain economic relation between the individual and the state as its economic basis. I refer to the theory of Menier,² who would obtain public revenue by a single tax upon capital.

The argument of Menier is as follows: Capital is a national product and therefore out of it alone should the state derive its income, "the tax representing the expense of giving value to, and the exploitation of, the national capital." Moreover, since the state exists to further individual liberty and human personality—"the enfranchisement of the individual"³—it should not lay any tax burden upon the individual as such. "The tax," says Menier, "ought not to know man, but only the national fortune. But since this fortune is held by individuals they should pay a tax in proportion to what they hold."⁴

The position is not wholly unlike that of George, since he would take the tax out of the national capital upon which the state has a claim because exploited by itself, the principle of taxation being a proportion to the amount of the national capital individually possessed, no tax being imposed upon the individual, *as such*. But does not Menier

¹ See Shearman, *op. cit.*, p. 169.

² *Théorie et Application de l'Impôt sur le Capital*.

³ *Op. cit.*, p. 192.

⁴ *Ibid.*, p. 196.

confuse a nominal and a real tax on capital, thus leading to the untenable position that a tax on capital does not, while a tax on income or other form of wealth does, interfere with individual rights and individual liberty? Besides, income quite as much as capital is a national product, and quite as much as capital is given value by the government. Not the least error of Menier, however, is the assumption that a tax is upon property, not upon the person. Only persons can have a responsible relation to the state, or be under obligations for its 'support. The state, it is true, demands property, that is, economic goods, but the demand is and can be only upon persons. Then, too, Menier falls into the error of supposing that one's interest in the government and obligation to it is directly proportional to the amount of capital that he possesses.

II. THE CLASSICAL SCHOOL OF ECONOMISTS

1. *The Benefit Theory of Taxation.* The economic basis of the classical economists rests upon their theory of the state as the protector of persons and property, while their principle of taxation is that the tax should be proportioned to the benefits derived from the protection. The economic aspect of taxation, in short, is simply the economic side of their political doctrine. Hence, a tax is regarded as an economic return for a presumably measurable benefit received from the government. This conception differs from that of the Physiocrats only in the character and extent of the content contained in the idea of benefits. Here the idea is that the relation of the state to the individual is that of a protector and guarantor of liberty, and that the individual should compensate for the expense of this protection in proportion to the benefits derived from it. It is an economic relation that is the counterpart of the Contract theory of the state, and is very largely an outgrowth of it.

According to this view, then, a tax is considered as the expense of protection, while the value of the protection is measured by the amount of property protected. This is implied in the famous dictum of Montesquieu: that taxes are the payment of a part of one's property in order to enjoy the remainder in security.¹ It is expressed still more explicitly by Adam Smith, whose canon has become classic on principles of taxation. Subjects, he says, should contribute to the support of government "in proportion to the revenue which they respectively enjoy under the protection of the state. The expense of government to the individuals of a great nation, is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their interests in the estate."² True, this conception of taxation is given as an explanation of the meaning of "ability," which is regarded as the basic principle. But it is only by a confusion of ideas, or an inconsistency of thought, that the principle of ability can be connected with the protection theory of the state. And yet this confusion or inconsistency is found in most of the classical economists. Its most extreme type is, perhaps, found in Murhard, who bases the tax upon the protection of property,³ yet would proportion the tax to "ability,"⁴ expressly repudiating a tax proportioned to the amount of income enjoying the protection.⁵

Such, in the main, is the view of most writers of this school, some, like Murhard, emphasizing the protection of

¹ Montesquieu, *Esprit des Lois*, ch. 1.

² Smith, *Wealth of Nations*, pp. 414-5 (Rogers' edition).

³ "Steuern werden bezahlt zum Schutze des Eigenthums. Darum, und nur darum gebe Ich Steuern." Murhard, *Theorie und Politik der Besteuerung*, p. 30.

⁴ For taxes are "am glücklichsten gewählt, wo jeder Staatsgenosse im Verhältniss seiner Kräfte zu den Staats-Aufgaben beiträgt." *Ibid.*, p. 80.

⁵ Cf. *ibid.*, p. 26.

property, others, like Sismondi, emphasizing the protection of persons.¹ From the point of view of consistency, however, Von Hock makes a distinct advance, since he not only recognizes the protection of both persons and property, but would have an equal tax for the former and a tax proportional to the benefits of protection for the latter.² Like Sismondi, too, he places the question squarely upon an economic ground, making the tax a compensation for the services received from the state.³ Yet in the hands of Von Hock the protection principle loses much of its character, as, indeed, it does also with Sismondi, since the term is made to include practically all that is contained in the idea of national well-being (*das Wohl des Volkes*). Protection, with such an extended conception of its content, loses, too, any significance that it might have as a basis of taxation, since it is incapable of giving a principle that is consistent with itself, for the distribution of the tax burden.

We have had occasion to criticise the principle of benefits in the preceding chapter. As affording an economic basis and principles it is even more defective than it is as a political principle. To have any validity from the view-point of economics the benefits of protection must have a definite assignable value, else the tax cannot be a compensation for a value received. From the point of view of the protection of persons it cannot be said that the benefit of the protection is equal, as Von Hock assumes, nor that the benefits from

¹ "L'impôt doit être considéré par les citoyens comme une compensation de la protection que le gouvernement accorde à leurs personnes et à leurs propriétés. Il est juste que tous le supportent, en proportion des avantages que la société leur garantit, et des dépenses que la société fait pour eux." *Économie Politique*, vol. II, p. 155.

² Cf. Von Hock, *Die öffentlichen Abgaben und Schulden*, §§ 1-4.

³ "Jeder Abgabe ist eine Vergeltung der vom Staat geleisteten Dienste, und erscheint darum nur dann gerechtfertigt, wenn der Dienst des Lohns werth ist." *Op. cit.*, p. 4.

the protection of property are proportional to the amount of property enjoying the protection, as most upholders of this theory maintain. Still less is it possible to apportion the tax to benefits when, as with Von Hock and Sismondi, benefits are made to include such immaterial qualities as honor, glory, education, religion, national well-being, etc. But apart from the impossibility of determining the value of the benefits, the economic relation between the individual and the state cannot be expressed by the idea of compensation for benefits received. Nor is this due simply to the fact that the benefits are not measurable quantities. The falsity of this conception rests chiefly upon the fact that it is wholly out of harmony with the social relations that a tax involves. Indeed, the inadequacy of this conception would seem to be felt by most of its defenders, since they, following Adam Smith, interpret "benefits" as synonymous with "ability." But the two ideas are totally distinct and mutually exclude each other. As Bastable says: "So far as the 'benefits' or 'service' principle is applied, it excludes the rule of taxation according to ability."¹ Most writers, however, who accept the benefit principle (whether or not they make it synonymous with ability) find a measure of benefits in the assumption that the benefits of government are proportional to the amount of property enjoyed or consumed. As expressed by Sir William Petty: "Every man ought to contribute according to what he taketh to himself, and actually enjoyeth."² With Petty this means, as with Hobbes, that the benefit is proportional to what one consumes, and therefore that the tax should be a proportional tax on consumption. This, too, is the tendency of the classical economists, who would throw every safeguard around capital and pro-

¹ Bastable, *Public Finance*, p. 389. Gen. Walker and Mlle. Royer, also of the classical school, likewise repudiate the "benefit" principle.

² Petty, *A Treatise of Taxes and Contributions*, p. 83.

duction. But not the amount of property that one possesses, and still less what one consumes, nor any other portion of income, is an adequate measure of the benefits of government. Nor is the claim of government limited to any portion of income. As Gen. Walker has well said, "the revenue rights of the state attach equally to every portion of private revenue, irrespective of the consideration whether any such portion is to be spent or to be saved."¹ But above all this view of the economic aspect of taxation is at fault, because it assumes a relation of economic equivalence where no such equivalence is possible, and because it falsely assumes that such an equivalence is the true basis and measure of the tax.

2. *The Exchange Theory.* The same in principle as the theory of "benefits," though different in point of view, is the "exchange theory" of Bastiat and Perry. Although this view of the tax was earlier expressed by Senior in his "Political Economy," with Bastiat and Perry it was made a part of their economic theory, the collection and expenditure of public revenue being regarded as determined by the same principles of exchange that determine all economic exchanges.

The theory starts with the principle of the "division of labor."² In all departments of economic activities, so the argument runs, protection is required, and in the division of labor in social and economic life the function of protection is assigned to the government. For the "service" that the government performs in procuring the protection every economic activity owes an "equivalent" service in exchange. That is, in the "division of labor," government performs one service—protection—in exchange for another service—contribution of taxes. Or taxation, like all private economic

¹ Francis Walker, "The Bases of Taxation," in *Pol. Sci. Quart.* iii, p. 11.

² Perry, *Political Economy*, p. 516. See also, Senior, *Political Economy*, p. 74.

activity, finds its basis and its principles in a theory of exchange of equivalent economic services. As Perry puts it, taxation "finds a ready and solid justification in the common principles of exchange." Indeed, "taxes demanded of citizens by a lawful government which tolerably performs its functions, are legitimate and just on principles of exchange alone."¹ For "value resides in services exchanged; but government is an essential prerequisite to any general and satisfactory exchanges, since it contributes by direct effort to the security of persons and property; and justly claims, therefore, from each citizen a compensation in return for services thus rendered him."² The same thought is also expressed by Bastiat, who declares that when a state renders a service equal to the tax, there is only an exchange (*il n'y a qu'un échange*);³ and that a good or a bad use is made of the tax according as the service of the state is, or is not, equivalent to what the public gives in exchange—the tax.⁴

In other words, according to the exchange theory of taxation the basis of the tax is an economic "exchange of services" between the government and the taxpayer. That is, the government being a participating factor in all private exchanges, it should find compensation for its "service" by participating in the gains from these exchanges. Or, the "gains" accruing to individuals because of the service of the government in providing protection and security, the individuals should share their gains with the government in exchange for its service. And from these assumptions we get as a principle of taxation that individuals should contribute to the cost of the service of the government "in proportion to the gains of their exchanges."⁵

¹ Perry, *Political Economy*, p. 516.

² *Ibid.*, p. 515.

³ Bastiat, *Ce qu'on voit et ce qu'on ne voit pas*.

⁴ Bastiat, *Sophismes Économiques, Oeuvres*, iv, p. 47 (Ed. 1863).

⁵ Perry, *op. cit.*, p. 516.

As against this view of taxation we may note that the state cannot be conceived of as simply an economic agency in exchange, whose "service" in the exchange is to be compensated for according to the principles of private economic exchanges. Such a conception expresses neither the relation of the state to the individual, nor that of the individual to the state. True, the state does perform a service for the individual and receives taxes from the individual, but the "service" and the tax are not related to each other in the way of an economic exchange. Hence, the basis of the tax is not to be found in the idea of an "exchange of service." The services of the government are far more extensive than that which obtains to the individual from the "gains of exchanges." And if the basis of taxation is not to be found in the idea of an economic change, so neither can the principles of taxation be expressed in terms of an economic exchange.

But even if we assume the fiction of an exchange, the character of the "exchange of service" between the government and the taxpayer is entirely different from that involved in private exchanges. For in the former case, however voluntary may be the payment of taxes in the abstract, there is a compulsory feature in the exchange that does not attach to private exchanges, which are wholly voluntary. In the former case, too, the terms of the exchange are made by one party to the exchange—the government; while in the latter case the terms of the exchange are mutually determined through the operation of economic laws—the law of "demand and supply," or, if you will, the law of "marginal utility." Finally, in the former case the normal basis of the exchange is cost—cost of the government service; in the latter case the basis of the exchange is the value, or "utility," of the exchange to both parties to the exchange—the basis of profits, or gains. In fact, as pointed out

by Sax,¹ between the two types of exchange there is only a distant similarity (entfernte Aehnlichkeit). But at bottom there is nothing new in this theory of taxation, except in name and point of view. In reality it is nothing but the old benefit theory in a new dress, the benefits being regarded as measured by the "gains of exchanges," or the profits of industry—a limitation as inadequate as any of the preceding. Thus, the exchange theory contains all the defects of the benefit theory in addition to those mentioned above; not the least being the absurdity of assuming that the services of the state and the taxes are economic equivalents, indeed, as Bastiat says, must be.

3. *The Insurance Theory.* A somewhat different version of the "benefit theory" is found in the "insurance theory" of taxation. The most noted champion of this theory is Thiers,² while it has the sanction of McCulloch³ and of E. Peshine Smith.⁴ It is closely allied to the "joint-stock" theory of Herbert Spencer,⁵ which is found, also, as one of the contradictions of Adam Smith.⁶ According to this theory the state is comparable to a Joint-stock Insurance Company, whose function it is to insure security of life and property. Hence, a tax rests upon the same basis and the same principles as the premium of an insurance company. "As government renders services to each and every one of its constituents," says E. Peshine Smith, "every one ought to contribute to the expense of its maintenance in the ratio that he receives advantage. It gives him security of his person and his property. So far as his property is concerned, it is apparent that his contribution should be esti-

¹ Sax, *Grundlegung*, p. 54.

² Thiers, *De la Propriété*, p. 355 et seq.

³ McCulloch, *Taxation and Funding*, p. 17.

⁴ E. Peshine Smith, *Political Economy*, p. 264.

⁵ Spencer, *Social Statics* (abridg. ed.), p. 122.

⁶ Adam Smith, *op. cit.*, p. 415.

mated as it would be by a private insurance company, by the amount at stake." ¹ But Mr. Smith, unlike Thiers, confines the application of the insurance principle to property, rightly admitting the impossibility of making "the value of personal security a basis for taxation," since "the value of protection to the person is incapable of estimation." ²

But a moment's reflection, however, is necessary to convince us that the whole theory is even more false than the "exchange" theory. As to the person, not only is it impossible to estimate the value of the protection—the insurance—but the character of the "insurance" given by the state is entirely different from that given by a private insurance company; while with property, though its value is capable of estimation, there is a similar difference in the character of the insurance. In the case of persons the state does not guarantee a monetary compensation in case of injury or loss of life, as does an insurance company, but contents itself with punishing the aggressor if he is found; or, at best, permits you to use its courts to compel compensation from the aggressor. So, likewise, in the case of property, the insurance company guarantees to make good the whole of the insured property that is lost or damaged, but the state, as Leroy-Beaulieu says, "will repair no damages made either by natural causes or by man. If a thief steals your property—the state will pursue the thief, but if he has consumed your property the state will not restore it." ³

But above all, it is not true that the conception of insurance rightly expresses the nature of the basis of taxation. To quote Leroy-Beaulieu again, "The attributes of the state are much more extensive than they would be if they were confined to this conception."⁴ Equally false is it that taxes

¹ *Op. cit.*, p. 264.

² *Op. cit.*, pp. 264-5.

³ Leroy-Beaulieu, *Traité de la Science des Finances*, p. 116. ⁴ *Ibid.*, p. 115.

are distributed on the same principle as an insurance premium. The premium is determined not only "by the amount at stake," but by the risk—by the probabilities of life, or of loss—in each individual case; the principle of tax distribution is determined by the solidarity of interests of the whole body of citizens, without regard to length of life or the insecurity of property.

III. THE PRODUCTIVE THEORY OF TAXATION.

Conceiving of "production" as the production, by individuals, of material, exchangeable goods, and looking only at the direct factors engaged in production, Adam Smith held that all consumption of economic goods that is not directed to further production is "unproductive consumption." Hence the consumption of wealth by the government, in the form of taxes, is unproductive consumption. In this Adam Smith was followed by most of the early economists of the classical school.¹ Bastiat and Perry, however, while they regarded the government as a necessary evil, assumed that its services have an economic value in exchange, not only with relation to consumptive, but also with relation to productive goods. But it remained for Wagner and Stein to give a more exact appreciation of the function of government in production.

According to Wagner the function of government in production is to transform material goods (Sachgüter) in the form of a tax into immaterial goods (öffentliche Einrichtungen, Dienstleistungen). "Because it is indispensable to the entire economic life, and for all private activity of individuals, the services of the government (Staat), and therefore the government itself, must be regarded, in an

¹ According to Ricardo taxes may affect production through their "tendency to lessen the power to accumulate." *Works*, p. 88. (McCulloch's edition.) For views of McCulloch and others, see *ante*, p. 43 and notes.

economic sense, as eminently productive."¹ So likewise Stein, who held more to the classical notion of the importance of production, regarded the government from the point of view of its indispensableness to the building up of capital (*Kapitalbildungsprozess*), and therefore not as an "unproductive consumer," but as an indispensable agent in production. "In fact," says Stein, "all services and payments to the government (*Staat*) are, economically speaking, nothing else than an integral part of the cost of production of every economic product."² Therefore, the tax that goes to maintain the government is simply a part of the necessary cost of production.

From the view-point of Wagner, who emphasizes the social side of production, and has in mind the totality of the factors in production, without distinguishing the pre-conditions from the immediate factors, the government is viewed as a direct agent in production, and therefore the tax itself as "eminently productive." From the view-point of Stein, on the other hand, who regarded production more from the standpoint of the individual, who emphasized the importance of capital and capital formation (*Kapitalbildung*), and thought of government as a condition precedent, government was considered rather as an indirect than a direct agent in production, and the tax itself as "reproductive;" and reproductive in the sense that it enables the government through its administration to maintain the conditions of capital-building, and "this reproductivity of the tax is, and will remain, the absolute condition of the power to pay taxes (*Steuerkraft*), therefore also the condition of taxes, and so of civic life itself."

But although different in point of view, the "productive" theory of Wagner and the "reproductive" theory of Stein

¹ Wagner. *op. cit.*, i, p. 13.

² *Finanzwissenschaft*, i, p. 15.

³ *Ibid.*, ii, p. 359.

are practically one and the same—a productive theory that is nothing else than the old “give-and-take” (*Leistung und Gegenleistung*) theory of taxation; or, as Sax observes, “it is a correlate of the “exchange theory.””¹ But the field of the exchange of service is here limited to the process of production, or to capital building. Even Wagner notes the parallel, and points out that in the state giving services for taxes (*Sachgüter*) there is a kind of an exchange (*eine Art Tausch*), but that the conditions of the exchange are fixed by the state. “Thus, the services of the state and taxes,” he adds, “appear as correlates of each other.”² But with Wagner the exchange is not, as is implied in the exchange theory, an exchange of special services; but the principle of exchange is that of general compensation (*generelle Entgeltlichkeit*), no separate reckoning being made with individuals concerning the advantages they receive from the state.”³

But neither Wagner nor Stein makes use of his productive theory to furnish a basis or principles of taxation; further, at least, than to show that the taxes must be adequate to the needs of the state, and the services of the state equal to the taxes, else production must be hampered or cease entirely. Or, as is implied in the view-point of Stein, taxes must be sufficient to enable the state to attain its highest efficiency in maintaining the conditions of production, of capital building, but never in excess of the value of the services of the state in capital building. That is, they must be high enough to maintain that degree of efficiency on the part of the state that will ensure their reproduction in capital, else capital building must cease, and thus the source of the tax is annihilated, and with it also the state itself.⁴ But with Wagner the productive theory lies wholly outside of the principles of

¹ *Op. cit.*, p. 92.

² *Op. cit.*, i, p. 523.

³ *Ibid.*, i, p. 14.

⁴ *Cf.* Stein, *op. cit.*, ii, p. 359.

private economy, his conception of the functions of government and of a "general compensation," without individual reckoning paving the way to his social-political conceptions, in which he finds both the basis and the principles of taxation.

That, however, there is much truth in the productive theory of the state and taxation, that the state is a *conditio sine qua non* of production, is not to be doubted. But just because it is this, because it is a condition precedent, it is not a directly active force in production. A condition of production, it is true; but it does not for that reason perform any measurable economic service in production. This Wagner admits.¹ Then, too, there is much expenditure by the government that by no conceivable hypothesis could be regarded as productive, as the term is understood by either Wagner or Stein.² Moreover, this conception of the economic relations involved is too restricted in its scope to furnish a basis and principles for taxation, as it includes but a small part of even the relations that are involved in the economic life, to say nothing of the wide field of "services," other than in the strictly economic sphere, for which compensation must be made, or rather must be maintained.

These facts go to show that while the productive theory undoubtedly represents an important phase of the economic relations between the state and individuals, it is not a phase that can furnish a basis and principles of taxation. And it is to the credit of both Wagner and Stein that they made no such attempt, and that least of all did they conceive this relation to be the only relation that determines principles of taxation; that is, did not conceive taxation as a purely economic problem.

¹ "Aber schwierig ist sogar die technische und vollends die ökonomische Productivität der einzelnen Staatsthätigkeiten zu beurtheilen." Wagner, *op. cit.*, i, p. 13.

² Cf. Sax, *op. cit.*, p. 98.

IV. THE UTILITY THEORY OF SAX.

Although the theories just discussed are based upon the conception of an economic relation between the individual and the state, they do not attempt (with partial exceptions of the "exchange" and "single tax" theories) to place taxation upon a purely economic basis, or to determine its principles by purely economic laws. It is, on the contrary, the boast of Sax that the problems of taxation are to be solved simply and solely by the application of economic principles and laws. The fundamental thought, as we have seen, is, that the collective wants of a people—wants satisfied by the agency of government—resolve themselves into individual wants in such a manner that they constitute a part in the totality of individual wants, being distributed indiscriminately in the circle (*Reihe*) of wants according to their intensity; and that all wants, collective and private without distinction, are satisfied in the order of their intensity, the final test always being the marginal utility of goods relative to the wants satisfied by them.¹ Collective and private wants are upon precisely the same plane, and in a conflict between them it is the relative intensity of wants that decides the competing claims. Precisely in one case as in the other, in taxation as in economics, it is a question of the intensity of wants on the one side, and of the marginal utility of goods on the other—the utility itself being determined by the psychological law of "greatest satisfaction with the least possible sacrifice," or effort. In brief, laws of subjective value, themselves rooted in sensation, are the alpha and omega of problems of taxation, as, indeed, of all financial problems.²

Not only have we here an economic basis and an economic principle, but we have in them the fundamental basis and principle of taxation. Economic laws become the in-

¹ See Sax, *op. cit.*, § 31.

² Cf. *ibid.*, § 52.

terpreter of both the political and ethical side of taxation. Indeed, according to Sax, taxation is not an ethical problem, the principles of taxation having nothing to do with ethical considerations. The problem is one of economics, and only by a strict adherence to economic laws is justice in taxation possible. The ethics of taxation is simply the inevitable consequences of the economics of taxation.¹

That this theory, thus briefly and inadequately stated, contains the simplicity that is claimed for it cannot be denied. But to Sax this simplicity is a guarantee of its truth (*eine Bürgschaft ihrer Richtigkeit*). Indeed, the simple law of value, the solvent of every financial, as of every economic problem, is comparable in its importance to the law of gravitation.² This simple law, so it is exultingly and triumphantly claimed, is the "light which, like the electric flames of the sun, clears up, all at once, the hitherto dark, confused province (of taxation)." ³ We are told, too, and repeatedly with much apparent self-satisfaction, that in this law the difficult problems of taxation for the first time find a solution; and for the first time a definite meaning is given to the idea of justice in taxation. The law, in short, explains everything—benefits, exchange, sacrifice, ability, justice, etc., etc.⁴

In this estimate of the merits of the theory, and in the axiomatic character of the proof of its validity, Sax has support in the able Italian economist Ricca-Salerno. With such able defenders it is with not a little diffidence that we venture to question some of the pretensions of this theory and to offer some criticisms upon it, at the same time acknowledging its many merits. Because of the exalted claims for this theory, and in form, at least, its comparative newness, we may be justified in giving to it a somewhat

¹ Cf. Sax, *op. cit.*, p. 524, and *Die Progressivsteuer*, p. 89.

² *Grundlegung*, p. 308.

³ *Ibid.*, p. 444.

⁴ Cf., *Die Progressivsteuer*, p. 90.

more extended consideration than we have given to any of the preceding theories discussed.

1. *Its Originality.* Reflection must, I think, convince us that, with all of its claims, the theory of Sax does not differ in essence from some of the older theories that it so vigorously combats. It differs from these only as the utilitarian theory of value differs from that of the classical economists—in being more fundamental in its analysis. True, this difference is important, and to Sax all-important. Like them all, the theory of Sax, from one point of view, is a theory of benefits, of exchange. But while they emphasize the objective side of the exchange, Sax emphasizes the subjective character of the exchange. Or if Adam Smith emphasizes the “protective service” of the exchange, Bastiat and Perry the fact of the exchange, Thiers the element of insurance, George the service of the government in creating “land values,” Wagner and Stein the productive service of the government, Sax emphasizes the subjective motives that determine the character and amount of the exchange—the ultimate fact of the exchange.

In another respect, also, there is an important difference. For, whereas, in the other theories the “exchange” suggests the idea of the state standing over against the individual as a separate entity, as an independent party to the contract, the theory of Sax more correctly regards the whole phenomenon as proceeding from the individual, and determined by the individual; collective life and collective economy being but a separate phase of individual life and individual economy.¹

But notwithstanding these and other differences, the basic idea of the tax and of tax principles is essentially the same with Sax as with his predecessors. As previously pointed out,² the practical rule that Sax deduces from his theory is

¹ *Op.*, § 31.

² *Ante*, p. 92.

the same as that previously expressed by Mill, as the result of his theory of "equal sacrifice," which itself may be considered as the subjective side of the theory of benefits and of exchange. At best the "equivalence" theory of Sax differs from the "equal sacrifice" theory of Mill only in giving an ultimate and more definite measure of the sacrifice, and we may add, too, of "benefits" and "exchanges." This ultimate measure he finds in the "marginal utility" of goods, applying to finance the economic "utility theory" of value.

But Sax is not, as he would have us suppose, the first economist to make this application. As pointed out by Professor Seligman, "the formulation of the whole doctrine had been developed by Meyer without any suspicion on his part that he had thereby made any specially new discovery."¹ One emphasizes the marginal want satisfied because of the tax, and the other the marginal want unsatisfied; a distinction without a difference. But the honor of first applying the utility theory of value to finance is credited by Mazzola to the Italian economist Pantaleoni.²

2. *Simplicity and Truth.* There is, indeed, a fascination in simplicity. But we ask: Is simplicity a guarantee of truth? And is the theory of Sax as simple as it seems?

It is no doubt true that only as we discover unity in social as in natural phenomena, do we get an *interest* in them (as distinct from a curiosity), because only then are we able to comprehend them in all of their relations, only then intelligently understand them. Such a unifying principle we have in the idea of utility, and this principle bids fair to become still more important in the future than it has been in the past; both in the interpretation of the philosophy of history, and in the evolution of political, social and economic institutions.³ But in the application of this principle to such a

¹ *Progressive Taxation*, p. 148.

² See *ante*, p. 53, note.

³ This was emphasized by Prof. Giddings in his lectures on Sociology at Columbia University, in 1890-91.

wide range of phenomena we must observe caution lest we push it too far, and neglect counteracting or modifying forces. We must beware of deceptive analogies. These cautions are particularly pertinent when we attempt to employ sensuous phenomena in the explanation and interpretation of distinctively spiritual activities and relations—the activities and relations of spiritual beings. For example, in applying the principle of utility to moral agents it is indispensable to truth that we take account of the distinctive characteristics and attributes of mind, over and above the sensuous pleasures and pains.

No better example can be given of the attempt to use one common, all-embracing principle to explain and to interpret all phenomena, to give unity to all knowledge, of the animal and human worlds, of the physical and the mental, of the individual and the social—than is to be found in Herbert Spencer's system of philosophy; but the simplicity of his principle does not prove the truth of his philosophy, and still less the truth of his special applications of his principle. There is, indeed, a unity in truth, but it is a unity in complexity; there is not always a truth in unity. In our search for knowledge we are too apt to be led astray by those Idols of the Tribe against which Bacon warned us, and our search for truth descends into a search for simplicity.

Now it is my contention, further, that the principle by which Sax seeks to interpret the phenomena of taxation is more complex than he imagines, at least more complex in its application. True, there is, and must be, an underlying unity in individual and social phenomena, since social life is, in a sense, but the larger self of the individual. But just because society is the "larger self," the common principle, when applied to it, takes on a complexity that does not exist when confined to the individual *as such*. It is operating under different circumstances and conditions in the two

cases, and, therefore, in its application these circumstances and conditions must be duly considered. Hence it is quite possible for the conclusions in one case to be quite different from those in the other. Only by neglecting important factors, and by the use of the specious argument of analogy can we conclude from the one to the other.

The fact is, that Sax is able to conceive of the simplicity of his principle only by abstracting from it some of its most important elements, only by considering it from the viewpoint of "pure economics," abstracted from all ethical considerations. But no such abstraction can be allowed; for wherever human relations are involved there are also involved ethical considerations. Human connotes ethical, and so likewise the problem of equality of taxation, as Professor Seligman observes, "connotes an ethical problem."¹ The problem of taxation can not, therefore, be reduced to a simple problem of pure, that is, of abstract, economics. But the "simplicity" of the theory of Sax is only the simplicity of abstract economics, therefore a seeming simplicity only. These criticisms will become more apparent as we proceed.

3. *Individual and Collective Psychology*.—The theory of Sax, like the utility theory of value upon which it rests, has its foundation in what we may call a psychology of motivated action. It is, moreover, one of the fundamental assumptions of Sax that collective psychology is the same as individual psychology; that, in other words, "collective" activity for the satisfaction of common wants is directed in precisely the same way as individual activity in the satisfaction of private wants; that is, by the *intensity* of the want to be satisfied, or by the egoistic impulse to get the greatest possible enjoyment in the satisfaction of wants with the least possible sacrifice to the self. But here, again—in concluding from individual to collective psychology—there is need of

¹ *Progressive Taxation*, p. 149.

the greatest caution. Similarities and analogies will not suffice.

It is true, as Sax very correctly shows, that "collective needs" do not pertain to the Collectivity—the state—as an independent entity, but are ultimately resolvable into the needs of the individuals that constitute that Collectivity, and true, therefore, that in the satisfaction of these needs individual psychical relations and activities are involved. But more than this fact is necessary to prove a psychical identity in the two cases. The psychical activity of the individual may be the same when he is acting for himself or the collective whole, but the condition, motives or impulses that determine the activity may not be, and we contend are not, necessarily the same. The highest good for the Collectivity may not be the highest good for the individual. It is in the neglect of these dissimilarities that Sax, to my mind, makes his greatest mistake. The Idols of the Tribe prove false guides.

What the psychological differences are will appear presently, but that they are important to the question at issue cannot be doubted. For the point at issue is whether the principles underlying utilitarian economics are so far applicable to public economy as to be able to furnish an all-sufficient basis, as also principles of taxation, solving the problems of equality, exemptions, proportions, etc., apart from any ethical considerations. Hence, it is important to ascertain how far the primary assumption, that individual and collective satisfaction of needs obey the same law, is true. The question may be considered subjectively, or psychologically, and objectively, or empirically. At present we are concerned with the psychological question: Whether the psychology of the individual, *qua* individual, is the same as that of the individual as participating in the Collectivity—is the same, that is, as collective psychology. We may note the

difference by first calling attention to certain facts of individual, then of collective psychology.

(1) *Individual Psychology; or the Psychology of Individual Satisfaction of Needs.*—In the first place, individual psychology has to do with sentient, self-conscious, self-determined organisms; that is, with persons whose peculiar nature it is to have “ideals, feelings and sensations”¹ that pertain to them as individuals, and others that pertain to them as social beings, that is, spring from their membership in political society. The former (we confine ourselves to the economic) are induced by a conception of certain psychical states, certain conceptions of the self, that the individual desires to attain for himself, while they involve the relation of external objects to the sentient self. By changing the objective relations he changes the subjective state of feelings and sensations—satisfies his needs, his ideals. By controlling the former, therefore, he controls his own psychical states, his own satisfactions. Ideas, feelings and sensations that a given order of things may induce are compared with the ideals, feelings and sensations that another possible order may induce, and the individual decides for himself (conditioned by external limitations) which order of things shall prevail by deciding which order will give him the greatest satisfaction on the whole, thereby satisfying his highest need as he sees it for the time being. For example, he may decide to exchange a given sum of money for the necessities of life, or for a work of art, thus effecting a subjective satisfaction in accordance with an ideal that he has formed of himself, an ideal that is peculiar to his own psychical nature.

Again, it may be noted that private economic needs are subjectively ideas, feelings and sensations that pertain to and are felt directly by the individual, but objectively they pertain to “goods” by which the needs are satisfied, the goods

¹ Cf. Sax, *Grundlegung*, p. 574.

themselves belonging to and being under the control of the same individual. By a subjective comparison of needs, as actually and as ideally satisfied by the goods in question, the subjective value, or marginal utility, of the goods is ascertained, relative to the intensity of feeling of the needs compared; and hence, again, since the goods are under the control of the individual, he may satisfy his needs in the order of their intensity so far as he is in possession of the necessary economic goods.

Expenditure of goods—satisfaction of needs—will, of course, be influenced by habits, by the circumstances of social and industrial conditions; but intensity of individual feeling, relative to the ideal the individual has of himself, will determine the order of the satisfaction of needs whatever the conditions; but because of the consumer's rent,¹ or surplus, there is not necessarily an equality between the objective value of the goods, the price the consumer must pay, and their subjective utility for the satisfaction of needs, or the price which he would be willing to pay. Or, rather, because there is not an equality between the objective value and the subjective utility of goods, there arises a consumer's surplus. Or, more correct still, a consumer's surplus arises because the marginal utility of goods to the consumer, measured by the sacrifice which he is willing to undergo in order to obtain them, is greater than their "social marginal utility," as Professor Seligman very aptly puts it, or "the sacrifice which the members of society as a whole are willing to make."²

(2) *Collective Psychology; or the Psychology of the Individual in Collective Life.* Thus far students of psychology have given but slight attention to the psychology of

¹ See Marshall, *Principles*, p. 181.

² Seligman, "Social Elements in the Theory of Value," in *Quart. Journ. of Econ.*, vol. xv, p. 332.

collective life, and we have not, therefore, a systematized knowledge concerning it. As I do not pretend to be a psychologist I shall not presume to elaborate such a theory. Nevertheless, I believe that a little reflection must convince us that "ideals, feelings and sensations" have quite a different significance according as they have reference to the individual, *qua* individual, or to the individual in his social activities—to the satisfaction of private, or to the satisfaction of collective wants.

That the psychical phenomena in both cases centre in the individual there can be no doubt, for there is no psychical "collective entity" in which psychical phenomena may centre. Nevertheless, the two classes of phenomena have distinctive characters. The "ideals, feelings and sensations" that actuate the individual, *qua* individual, may lead to a quite different course of conduct from that to which they would direct if they actuated the individual as representative of the "collective whole." It is nothing to our purpose that there is no psychology of the individual worth speaking of, except of the individual participating in social life. The point is that he is actuated differently when acting for himself and when acting for the "whole," because actuated by a different conception of the "good," in the one case a good for the self, in the other a good for the whole—a "personal" good and a "common" good. And it is the conception of the "good" that is the fact of importance. Intensity of feeling may be the immediately controlling force in both cases, but it is the conception of the "good" that one forms for himself that determines the direction of that intensity. Sax may find in *intensity* of feeling—in sensation—a *tertium comparationis* to explain demand and supply, sacrifice, differences in needs, etc.,¹ but he fails to see that there is a still more fundamental *tertium comparationis* that

¹ Cf. Sax, *Grundlegung*, p. 176.

explains and interprets the intensity of the sensation, to wit.: the conception of the ideal that one sets for himself to attain.

From these facts it would seem clear that "ideals, feelings and sensations" partake of a different character according as they are concerned with the satisfaction of private, or of collective, wants; that, therefore, we cannot safely conclude from rules of private satisfaction to rules of collective satisfaction; that the fact that intensity of desire is an immediately controlling force in both cases is not, as previously pointed out, a sufficient fact for comparison. In fact, it is only as the individual in acting for the whole differentiates his motives and actions from what they would be if he were acting for himself alone; only, that is, as he differentiates his conception of the good of the whole from his conception of the good for self, is his action likely to be directed to the attainment of the "common good." On the other hand, so far as the individual in his capacity of acting for the whole is dominated by the impulse that would guide him if acting for himself, irrespective of others; so far, that is, as he is guided by a conception of his own "personal good," and not by a conception of the "common good," the tendency of his action will be to thwart the attainment of the "common good." This latter case is well illustrated by the "professional" office seeker, with whom the interest of self dominates his every action, and who thereby, paradoxical as it may seem, assumes a different character, a different personality, when acting in the two capacities¹—for the self and for the whole; for when acting for the whole he does not make its good his good as he would if the whole were himself. He rather assumes that he is the whole.

¹ There is, indeed, much apparent truth in the semi-serious suggestion of Prof. Giddings, that the "politician" at least, has a double consciousness, a dual personality, assuming one in his private capacity and another in his public capacity. Notes from lectures on Sociology, Columbia, 1890.

From the above considerations, inadequate as they are, it is apparent that private and collective needs are distinct in their character, their point of view, their aims, and may be in their subjective results. Private needs are felt by the sentient self to whom they belong, their interest is solely for the self, they are directed by the self for its own "good," and are measurable by the self by comparison with felt needs. Collective needs, on the contrary, are *conceived* by individuals, but as belonging to the whole; are indirectly controlled and satisfied by representative agents, pertain not to the individual, but to the common good, and are only remotely capable of measurement by comparison, if, indeed, they are not immeasurable. The former are *felt*; the latter, as Mazzola¹ points out, are distinctively "reflexive needs," needs related to thought rather than to feeling.

4. *Collective Needs Empirically Considered.*—That the satisfaction of collective needs is not wholly determined by the same rule, or law, that determines the satisfaction of private needs will appear still more evident by a few practical observations of objective facts; facts, however, that are determined by and are illustrative of the psychological differences already mentioned. We need to note only differences in the character of the problems of satisfactions, and the political facts relative to collective satisfactions.

(1) *Differences in Character.*—It is, as we have seen, one of the errors of Sax that his economic theory is too abstract; that he assumes economic action to be determined solely by the intensity of economic want, whereas there are many influences that go to shape economic action, as ethical, social,

¹ Mazzola, *op. cit.*, p. 73. While Mazzola makes some good criticisms of the theory of Sax, he seems, on the whole, to accept the theory; but thinks that the highest utility of the tax can be determined only by differential calculus, since there are various factors involved in the problem, and not one factor, as Sax assumes. This, he says, "is the limit to which financial economy can go," p. 149.

etc.¹ The error is aggravated when economic law is applied to financial problems, such as taxation, since here these modifying influences become of even greater importance. With this correction there is, under ideal conditions, a degree of similarity between the satisfaction of private and public needs, between private and public economy. Still, even then, we are compelled to assume that the individual in his public capacity seeks to change the objective relations of things with respect to an ideal standard for the whole body politic; just as the individual seeks to change the relations of things with respect to an ideal standard of objective relations that he forms for himself. But these conditions are ideal and imply ideal conditions of human nature. They are yet far from attainment.

But even if the ideal conditions prevailed there would yet be an important difference; for although ethical relations are involved in both cases, they are or should be the determining force in all action directed towards public ends, since every public act, particularly in matters of taxation, involves the rights and duties of every member of the state in a manner that is out of all proportion to that of private economic action. If this were not so a government might well adopt the advice of McCulloch and let expediency determine its tax system.² Then, too, the fact that action in the one case is directed with reference to self, and in the other case with reference to others, puts a wide chasm between them. Intensity of feeling may control both sets of actions, but not all public action is controlled by the need most felt by the public, because the individual in his capacity

¹ See last note, and Zorli, *La Scienza dei Tributi*, p. 17, where he mentions cosmological, anthropological and sociological elements. Cf., also, Cohn, *Science of Finance*, sec. 195.

² See *Taxation and Funding*, p. 161. Cf., also, Held, *Einkommensteuer*, p. 115, and Newcomb, *Political Economy*, p. 493. Newcomb relies upon shifting of taxes to effect justice in the long run.

as a public agent is too often actuated by motives that are relative to purely private ends. These facts may be illustrated by the political factors in the problem.

(2) *Political Factors.* According to Sax the method by which we satisfy our collective wants, by the same rule that we satisfy our private wants, is through the agency of representative government by means of our vote. (He does not pretend that his theory applies to any other form of government.) But is this anything more than a pleasing fancy? True, we voluntarily consent to be taxed—to make expenditures for our “collective” needs; but the tax is pre-eminently compulsory and must be paid whether we, as individuals, will or no. Nor does our consent carry with it the amount of the tax nor the purposes for which it will be used. It is true that we consent to leave this to the discretion of our representatives, but their judgment is not necessarily our judgment, for they are more inclined to be dominated by their needs than by our needs,¹ and their needs take on a new form and variety as they become public agents.

Without doubt, much of the public expenditure is in the interest of the common good, but there is no less doubt that no inconsiderable part of it is spent to satisfy the private needs of our “representatives,” rather than the common needs. Legislators will vote for expenditures that they know will enrich themselves, their friends, or their constituents, well aware that its ultimate utility to them will far exceed their share in the burden of the tax, while for the

¹ “Sax’s error, when considering the cause that determines taxes, is in giving excessive importance to the needs of those who pay them and too little to the needs of those who make them pay.” Zorli, *op. cit.*, p. 55. This little book contains a very good criticism of the theory of Sax. The spirit of the criticism is very similar to that which will be found in the text. As our own criticisms were made before we knew of the work of Zorli, we have not made as many references to it as we should otherwise have done.

great mass of the taxpayers there would be far greater utility in private expenditure. The public good is made to give way to the selfish interest of the individual or a class.¹ Surely there is little here that is common between private and public economy!

But says Sax,² this state of things cannot always endure, for in the course of time—it may, indeed, be a generation or more—the wrongs will be righted, if needs be by revolution. Indeed, a whole generation or more pilfered, deprived of the fullest satisfaction of both their collective and their private needs, and the wrong to be righted, adjustment of expenditures in accordance with needs to be re-established only by some future generation, perchance at the expense of a costly and bloody war, perchance, too, with a repetition of the same order of events! And this is satisfying our collective needs on the same principle that we satisfy our private needs! Could the infatuation for a theory go further?

But apart from all corruption, the individual has a very indirect and very inadequate control over the public expenditures for collective needs. In the first place a majority vote in the legislature may represent a minority of the voters.³ Then, again, it is seldom that the policy of expenditures or taxes is submitted to the voters before the majority in the government have entered upon it, and which, perhaps, as in

¹ Note, for example, our corrupt city governments. It is, however, not confined to them. Speaking of Italy, Pareto writes: "Up to the present time the governing class has not opposed the increase of expenditures, because they have the means of enriching themselves, and at the same time satisfying their vanity. If they had to pay for this indulgence they would be inclined to renounce it. This, contingency, however, seems far off. The example of Spain and Portugal shows that a Latin country may approach the verge of ruin before the governing class renounces the policy which has brought it there." "Parliamentary Government in Italy." *Polit. Sci. Quart.*, vol. viii, p. 717.

² *Grundlegung*, pp. 517 and 522.

³ Note also approvals and vetoes by presidents elected by a minority vote.

the case of war, is practically irrevocable. The subsequent "approval" at the polls may mean but little, since the appeal "to support the party" has a stronger influence upon the voters than the real merits of the tax or the expenditure.

Nor do we find it at all more satisfactory if we turn from the "representatives" to the voters, as is illustrated by the almost universal tendency, if not to evade taxation, to escape a just proportion of its burden. Says Pareto, in the article referred to above: "The landed proprietors are powerful to resist any increase of taxation upon their property; they have even been able to get the land tax reduced two-tenths, and this at the very time when the expenses of the state were increasing in an extraordinary degree and taxes on consumption were being increased in consequence."¹ Nor is this condition exceptional with Italy. Satisfying our collective needs at the expense of others by evasion of taxes is by no means uncommon.

Thus, from whatever point of view we consider the question, we cannot find that Sax and his disciple, Ricca-Salerno, find much proof for their theory in representative government.² The prevalence and power of an egoism of the individual, or of a class, in a representative government prevails against the practical application of the theory only in less degree than it does in a despotism, where the theory is not assumed to apply. But Sax evidently shares in the sanguine expectations of Pantaleoni—that eventually all lower forms of egoism will give way to the "egoism of the species"³ to an altruism that for rulers as well as for the ruled enforces the sacrifice of self to promote the general happiness.

That such a condition does not yet prevail; that public assessments and disbursements are not yet wholly determined on the same principles as private economy; that there is a

¹ *Op. cit.* 717.

² *Cf. Zorli; op. cit.*, p. 62.

³ Quoted by Nitti in *La Scuola Positiva*, Sept. 1891, p. 491.

discrepancy between the theory and practice, Sax virtually admits. But, so it is argued, any unjust distribution of the tax is not the fault of the theory. It is due rather "to error or to ignorance of actual circumstances; but more still to the class egoism of the ruling element of the people which seeks to throw the tax burden as much as possible (überwiegend) upon the governed."¹ Yet this condition can not long endure, since such a government would be eventually overthrown by the votes or by the guns of the people.

But this admission, I maintain, is not to be so easily reconciled with the contention that in the economic actions pertaining to the fulfilment of the ends of collective life, "men are guided by the same psychical acts, ideas and sensations which a comprehensive analysis shows to be the guiding elements of all economic action, but which until now [*i. e.*, until this great discovery brought truth to light] was able to explain only individual economy."² The fact is, that there has not been sufficient discrimination between "the psychical acts, ideas and sensations" *as such*, and the difference of circumstances and conditions under which they are produced; or between them and the standard, or ideal, in accordance with which they are interpreted—between the conception for *self*, and the conception for *others*. Hence the error in the analogy that forms the basis of the theory.

Upon the whole, then, we cannot think that Sax has added anything of great importance to an economic basis and economic principles of taxation. We would summarize as its more important defects: that it is a pure abstraction; that it errs in its analogies and in its theory of their realization; that its validity, at best, rests upon ideal conditions that nowhere exist, and that, therefore, it is wrongly assumed that ethical principles will be realized through the working

¹ *Grundlegung*, p. 521.

² *Ibid.*, p. 574.

of economic law—the law of “greatest intensity,” or marginal utility. But after all, the “equivalence” of intensities of needs sacrificed because of the tax, which to Sax is “the whole problem of tax distribution in a nutshell,”¹ is, as we have seen, only a special phase of the sacrifice theory. But “equality of sacrifice” is fundamentally an ethical principle.

IV. CONCLUSION AS TO TRUE ECONOMIC BASIS AND PRINCIPLES

From the preceding review of economic bases and principles of taxation we are forced to conclude, for reasons given: that an economic basis and principles do not stand apart, but are closely correlated with a political and an ethical basis and principles; that neither the idea of “protection,” of “service,” nor of “exchange” forms a competent basis for economic principles of taxation, because, among other reasons, the economic basis must be in perfect harmony with the political basis—with the relations between the individuals and the state—and this basis is not properly expressed by these conceptions, because they do not properly express the true nature of the state. Moreover, we have seen that these ideas have no practical significance, since neither the “protection” nor the “service” exchanged, has any assignable economic value such as the theory implies.

And yet there must be an economic basis from which economic principles may be drawn, and this basis must have definite reference to the relation between the individual and the state; more specially to the economic relation. According, then, to our conception of this relation—of the nature of the state—the real economic basis of the tax is the collective needs that result from the political organization of

¹ *Die Progressivsteuer*, p. 90.

society—the state; the necessity for the tax being due to the régime of private property. But private property must also provide for the satisfaction of private economic needs, and, therefore, the real economic problem of taxation is to satisfy the collective needs in a manner proportionate to the satisfaction of private needs; or so to distribute private property—really the income from it—between the satisfaction of private and collective needs as to produce the highest economic efficiency, the highest economic development, and the most complete satisfaction of needs. The point of view is that of the individual, and the real question is one of the distribution of his income between the satisfaction of his private and his collective needs. But since the collective needs must be satisfied through agents, there is a seeming opposition of interests, which, as Schäffle says, occasions a perpetual strife.¹ This conflict will never wholly cease, but with a due regard of economic principles by the agents of the state it may be greatly alleviated.

What, then, are the economic principles that should guide the agents of the state in matters of taxation? Briefly, the primary principle is precisely that of the problem just stated: That individual income should be so distributed between private expenses and taxes—between the satisfaction of private and collective needs—that both the highest efficiency of the state and the highest efficiency and development of the individual will be thereby attained. In the words of Stein:

“The ruling principle of Finance is that, in covering the needs of the State, a due proportion be maintained as compared with the proportionate covering of those needs not represented by the State. . . . Neither public nor private economy presents, of itself, a final

¹ “Er ist Befreiungs- und Freihaltungskampf auf Seite der Steuerträger dem Staate gegenüber.” *Grundsätze der Steuerpolitik*, p. 164. Cf. also, Cohn, *Science of Finance*, sec. 208.

end. To pamper the one and starve the other, to over-nourish the one and stunt the other, appears, upon its face, without warrant, since an effective State and a strong people are alike essential elements in national life. Both public and private needs are integral parts of a common necessity, and the one as well as the other must finally be determined according to their relative importance for the maintenance and development of society as a whole. . . . To provide for the public necessities as well as for private wants, in the ratio of their importance, is the manifest, self-apparent demand which the theory of finance that holds itself within the circle of economic vision asserts as its own, and which may be successfully opposed to the parsimonious citizens as well as to the spendthrift State."¹

It is admitted that this economic principle is very general in character, but it is sufficiently objective and definite to be capable of practical application; yet the extent of its practical realization will depend upon the extent that conscientious and enlightened statesmen hold the reins of government—ultimately upon the moral status of the community. But this principle obtains definiteness by the corollaries, or secondary principles, that flow from it, and through whose application alone the primary principle obtains practical significance. The secondary principles relate to the economic effects of the tax upon the individual and thereby upon the sources of the national income, and involve such questions as those touched upon in chapter II. For without a careful observation of the effects of a tax a due distribution of income between private and collective needs cannot be effected.

It may be noted in conclusion, that "Equality of sacrifice," or "Equivalence," cannot be the economic principle, since

¹ Quoted by Adams, *Public Finance*, p. 28. "Oberstes Princip der Finanzwissenschaft ist die wirtschaftlich verhältnissmässige Deckung des Staatsbedarfs gegenüber einer nicht minder verhältnissmässigen Deckung aller nicht-staatlichen Bedarfe." Schäffle, *Grundriss der Steuerpolitik*, p. 17. Cf. also, Held, *op. cit.*, p. 106.

these involve comparison with others and have, therefore, an essentially ethical connotation. Nevertheless, economic principles are not entirely distinct from ethical principles any more than an economic basis is wholly distinct from an ethical basis. As an economic basis and economic principles result from a political basis and principles—from a political conception of the state—so the realization of economic principles is one of the essential conditions of the realization of an ethical standard of taxation.

It may be noted also, that because of the relation of the economic to the political, the principles of "universality" and "equality" are also economic principles. That is, the economic principles must be applied to every member of the state, and applied equally, or in the same manner, since every citizen stands in the same relation to the state. The terms have not here any specially ethical import, but result simply from the relation of the economic to the political aspect of taxation. The ethical character of taxation will be discussed in the two following chapters.

CHAPTER VI

THE ETHICAL BASIS OF TAXATION

IT has been implied throughout the preceding discussion that justice is the supreme end and the supreme test in the distribution of the tax burden, and that, therefore, there must be an ethical basis on which principles of justice may rest, and from which they flow as a necessary consequence. Indeed, no notion is more fundamental to our conception of the nature of the state, or to our conception of the political basis of taxation. The realization of justice as a condition of the highest individual development being a supreme end of the state, justice in the distribution of the burden for the maintenance of the state becomes imperative. No social relations involve more fully the relations of individuals to each other, or the common relation of all individuals to the whole body politic, than do the relations that are involved in taxation. Hence no social relations are more deeply ethical in their character and requirements. Here as elsewhere, wherever the relations of man to man are involved, the ethical end becomes supreme—in conception if not always in fact.

But the ethical problem, or the problem of justice in taxation, is as difficult as it is important. That what is ethical is just is conditioned by circumstances, *i. e.*, by the working of economic forces and laws, by economic conditions and results, by ethical standards and ideals—has been already admitted; but the fact has been equally insisted upon, that purely “economic” results are not a test of the

ethical, but rather that ethical considerations and ethical standards are the test of the justice of economic results. But this granted, it is by no means a simple problem to determine what is the ethical standard, or the ethical basis of taxation; still less simple the determination of the principles that should control taxation.

The problem of determining an ethical basis is rendered all the more difficult from the lack of a common agreement in primary conceptions; for our conception of an ethical basis is very largely determined by our conception of the state. Since, then, the conception of the state assumes a variety of forms we have also a variety of conceptions of the nature of the ethical basis of taxation. Nevertheless, this variety may be reduced to two fundamental conceptions—to “benefits” and to “ability.” Into one or the other of the ideas connoted by these terms every ethical basis of taxation may be resolved, though each assumes several forms of expression. In the earlier period of taxation and of economic thought, “benefits” was the more commonly accepted basis of taxation, but in recent years the “ability” basis is more widely accepted. Let us consider each of these in turn.

I. THE BENEFIT THEORY OF TAXATION.

The benefit theory of taxation is, in part, an outgrowth of earlier political and social conditions, particularly feudal conditions; and, in part, is a natural consequence of the contract theory of the state, or of the conception of the state as a protective agency, thereby conferring benefits upon individuals. This fact has already been adverted to,¹ as also the fact that the doctrine is still widely accepted, and is a commonly adopted legal fiction.² It is now generally discarded by economists, about the only modern school of economists

¹ *Am. L.*, p. 63.

still upholding this doctrine being the "Single-Taxers":¹ who, like their predecessors, the Physiocrats, uphold the benefit principle of taxation.²

The general idea underlying this theory is that political basis which assumes that a tax is a payment for a service rendered by the state to the individual. That is, the basis of the tax is assumed to be a "service" or the "benefit" from a service; and hence it is concluded that the tax payment should be made in accordance with the "service" or the "benefit" received. This basis of taxation we have already considered from both the political and the economic points of view. The question now is: is this a just basis of taxation? This question may be best answered first by briefly considering the different forms which this basis of taxation has assumed. But in the first place it may be observed that the "service" is ultimately resolvable into the service of protection, or the benefits derived in consequence of the protection; while the different forms that the basis has assumed are resolvable into either the *cost* of the service or into the *value* of the service.

1. *The Cost-of-Service Theory*.—The idea underlying this theory, or at least implied in it, is that every individual should pay to the state the exact cost of his protection. It has its root, we think, in the conditions that prevailed under the feudal régime, and has a show of validity in the poll tax and in the modern fee system. The idea is that of special services, whereas the chief services of the state are general in character, though it does perform services that are special to individuals or to classes of individuals. For the latter fees are exacted, for the former taxes. There is, then, an important difference between fees and taxes,³ and the principle that applies to the latter is not applicable to the former.

¹ Cf. *ante*, p. 109; also, Louis F. Post, *The Single Tax*, p. 14.

² See Seligman, *Essays in Taxation*, pp. 274-282, for clear distinctions.

Taxes have no relation to cost, while fees do "not normally exceed the cost of the particular service to the individual."¹

Not only is the "cost" theory based upon a wrong conception of the services of the state, but even if the service be regarded as a service to the individual, the individual cost of that service is beyond all possibility of determination. Indeed, even in the case of special services for which "fees" are exacted, the cost of the "special service" cannot be determined; that is, cannot be exactly determined for every individual. But even if the individual cost could be determined, it is more than questionable if the expense of such special service should be wholly covered by fees; for the state should perform no service that is wholly special to an individual, or in which there is not *some* common interest; and wherever such common interest exists some part of the expense, at least, should be met by a tax without reference to the individual cost.* The expense should be met by a combination of fees and taxes, and theoretically the proportionate amount of the fee should depend upon the relative importance of the special and the common interest. For special reasons, it is true, as for sumptuary or police purposes, or as a means of taxation, fees may equal or exceed the cost. But the question of fees apart, the cost to the individual, or on account of the individual, of a common service is not a calculable quantity. Cost of service cannot, then, be a just basis of taxation, both because taxes are paid for a common service without reference to the cost on account of any individual, and because, even if there were such reference, the cost could not be determined.

If, now, we turn to the logical consequences of this theory we shall not find it any more satisfactory as a basis of justice.

¹ See Seligman, *Essays in Taxation*, p. 276.

* Cf. Sidgwick, *Political Economy*, p. 563. Sidgwick inclines to the cost-of-service principle, but thinks "this principle can rarely be applied."

The "services" of the state, according to this theory, we have seen to be the protection of persons and property. Now as a general rule there is no difference, to speak of, in the cost of protecting persons, considered wholly apart from their property. Nevertheless, the expense is greater for those subject to criminal assaults. Strictly, therefore, according to the theory of costs, those who are so unfortunate as to be subjected to assault should pay a penalty for their misfortune by a tax in excess of that imposed upon those fortunate enough to escape assault. It is, indeed, a question if they should not even pay a larger tax than the criminal who committed the assault. But on the whole, however, an equal poll tax, so far as it should be based upon the cost of protecting the person, would not be greatly at variance with justice. But the problem of costs in the protection of property is by no means so simple. The question is complicated by being dependent in part on the kinds of property and in part on the amount of individual holdings. It costs more, for example, to protect property in buildings, in money or other tangible forms of property, than to protect property in land; and, other things being equal, the tendency would be for the protection of a million dollars' worth of property in the hands of a thousand individuals to cost more than the protection of an equal amount of property owned by one individual. The same tendency is true in the case of property that is widely distributed, compared with property of equal value that is greatly concentrated. On the other hand, it costs but little if any more to protect a home and contents costing one million dollars than to protect one costing one-tenth of that sum. Thus the cost basis would lead us into interminable and insoluble difficulties, in some cases leading to proportional or to progressive taxes, in others to regressive taxes. Justice would have no place in such a system.

But the most important reason why cost of service is not

a just basis of taxation is because the state is necessary to the highest development of the individual and must be maintained regardless of the cost entailed on account of any individual member of it; because the bond of membership is not a cash nexus, but a spiritual bond; because the obligation to support and maintain the government of the state rests upon a common, or general, interest (whose costs, as we have seen, cannot be individually determined), not upon a special interest; because, in fine, tax obligation rests upon membership in the state, not upon the cost of any individual to the state.¹ Briefly, cost of service is not a just basis of taxation since it rests upon a false political basis, for the ethical basis, as we have seen, must be in harmony with, as it is dependent upon, the political basis. The total tax must, indeed, equal the total cost of the government, but this cost cannot be individualized.

The same general result appears in whatever aspect we consider the cost-of-service principle. Take, for example, the insurance theory of taxation. Here it is held that a tax is based upon the same principle as the premium of insurance, and this is assumed to be the cost of the insurance. But no insurance premium corresponds to the cost of the insurance, except, possibly, in rare cases in life insurance. As a rule, any particular insurance premium is much greater or much less than the cost. Besides, the premium takes account of the element of risk; but it is manifestly impossible for a government, in its protective "insurance" to take account of differences in risk, just as it is impossible to take account of differences of cost. The cost and the risk must be averaged.

Take, again, the "productive" theory of taxation, where

¹ "Die Nation giebt als Ganzes die Mitteln für ihren Beruf als Staat und jeder Einzelne muss geben weil er Glied der Nation ist." Helfferich, *Schönberg's Handbuch*, iii, p. 139.

the tax is regarded as a necessary part of the cost of production. Here the cost of the "service" of the government on account of any particular industry cannot be determined. What is determined is the cost of the service to the industry, which cost is equal to the tax imposed upon it, but this cost to the industry has no definite relation to the cost of the government on its account. For the government only the total cost is determinable. The productive basis, as an exclusive basis, would, therefore, be an unjust basis on the cost theory. But it becomes still more unjust when we consider that the cost of its service for protection is only a part of the cost of the service that it renders. However, this basis has never been assumed as a basis for the distribution of the tax.

2. *The Value-of-Service Theory.* Value of service as a basis of taxation has been much more generally accepted than cost of service. Indeed, it has been widely accepted by those who advocate "ability" as a basis of taxation, the presumption being that ability to pay taxes is determined by the service of the government to the individual. But in all such cases, as, for example, with Adam Smith, the real basis of the tax is the value of the "service," ability and value of service being expressions of the same thought from different points of view.

What, then, is meant by value of service as a basis of taxation? It is, that the tax of every individual should be based upon the value of the service of government to him; or that the individual should share in the total costs of government in proportion to the value of the benefits that he derives from government. The basis of the tax centers in the individual, while in the "cost" theory the basis centers in the state. It is the value of the "service" to the individual instead of its cost to the state.

What, now, is to be said of value of service as an ethical

basis of taxation? That, like cost of service, it cannot be a just basis because it is an impossible basis. The value to the individual of the service of government is just as indeterminable as the cost of the service to the government on account of the individual. True, no one contends that the tax should equal the value of the service of government. To do so would, to say the least, make the tax enormously exceed the cost, for the absolute utility of government bears no relation whatever to the costs of government. Every taxpayer, no matter how large his tax, receives a "consumer's rent" that is out of all proportion to his tax. Between the individual tax and the value of the service that is given in return by the government, there is no comparison. We may say, indeed, with Léon Say, that taxes are the price of the total advantages derived from the government;¹ but this price is not determined by the value of the service to the taxpayer, as, in fact, it includes a large "consumer's rent," if we may use this figure in this connection.

But value of service is an equally impossible basis when understood to mean that the costs of government should be proportioned to the value of the service received from it, for this "value" is practically an unknown quantity, and between the known and the unknown no ratio can be established. Nor are we any better off if we suppose that the tax of every individual should be such a portion of the total costs as the value of the service that he receives is of the total value of service, for here we have a ratio between two unknown quantities, and the determination of the known by the unknown.

These theoretical difficulties, however, have been evaded by advocates of the value-of-service theory by the assumption of different methods or standards of determining the value of the "service:" as objectively by the amount of ex-

¹ Léon Say, *La Question des Impôts*, vol. i, p. 119.

penditure, the amount of property, or the amount of income; subjectively by the law of marginal utility. The briefest consideration, however, must convince us that in none of these do we find a satisfactory measure of the value of the service of government.

(1) *Expenditure*.—It was a favorite thought of Hobbes that expenditure, or consumption, is the surest test of the benefits of government. One of the conditions of maintaining peace, says Hobbes, is "to divide the burthens and charges of the commonwealth proportionably." He then adds; "Now there is a *proportionably* to every man's ability, and there is a *proportionably* to his benefits by commonwealth, and this latter it is which is according to the law of nature. For the burdens of the commonwealth being the price that we pay for the benefit thereof, they ought to be measured thereby. And there is no reason when two men equally enjoying, by the benefit of the commonwealth, their peace and liberty to use their industry to get their livings, whereof one spareth and layeth up somewhat, the other spendeth all he gets, why they should not equally contribute to the common charge. That seemeth, therefore, to be the most equal way of dividing the burdens of the public charge, when every man shall contribute according to what he spendeth, and not according to what he gets."¹

So likewise Petty: "It is generally allowed by all that men should contribute to the public charge but according to the share and interest they have in the public peace; that is, according to their estates and riches: now there are two sorts of riches, one actual, and the other potential. A man is actually and truly rich according to what he eateth, drinketh, weareth, or any other way really and actually enjoyeth; others are but potentially or imaginatively rich. . . . Con-

¹ *De Corpore Politico*, pp. 216-7.

cluding, therefore, that every man ought to contribute according to what he taketh to himself, or actually enjoyeth."¹

It will be noticed that with both Hobbes and Petty the measuring of benefits, and therefore taxation, by consumption is assumed to conform with justice, as is implied in the use of the moral concept "ought." But, in fact, what we personally expend upon ourselves is a very inadequate measure of the benefits we derive from government. To have the means of potential consumption is a "benefit" little, if any, less than actual consumption. Mere possession, however little one may expend upon himself, gives power and influence that are decided assets in the list of benefits. Equal consumption is not a test of equal benefits. But above all, the benefits of governmental protection cannot be reduced to any such material standard. Consumption alone, therefore, is not a just standard for taxation, even from the point of view of benefits.

(2) *Property*.—McCulloch follows Thiers in making property the measure of the benefits of the "insurance" guaranteed by government. Government being "established for the common benefit of all . . . it necessarily follows that every individual should contribute to its support according to his stake in the society, or to his means."² This notion that property is the measure of the benefits that we derive from government is closely allied with the insurance theory of taxation—that taxes are paid for the insurance of our property by the government. But this conception wholly neglects the benefits derived from the "insurance" of our persons. Moreover, as already pointed out, there is no analogy between the "insurance" of government and the insurance of a private corporation. The character of the benefits is entirely different; but in neither case are the benefits wholly measured by the amount of property. In

¹ Petty, *op. cit.*, p. 83.

² McCulloch, *op. cit.*, p. 17.

the case of the benefits of government the amount of property represents but a fraction of those received, even when we include, as we should, the advantages directly derived from property.

(3) *Income*.—A far more common standard for measuring the benefits of government, than either expenditure or property, is found in income. With the Physiocrats only the income derived from the *produit net* of land was regarded as a measure of benefits, because only the holder of land enjoyed the benefits of government; and similarly, the modern "single taxers" confine such income to "economic rent," and for the same reason as the Physiocrats. But most advocates of the benefit theory have followed Adam Smith in making the benefits conditioned by the revenue enjoyed under the protection of the state. And from a purely economic point of view of benefits, income would seem to be a truer measure than expenditure or property, for it represents the means of both actual and potential enjoyment. Property, may, indeed, also represent potential enjoyment, but if it becomes actual it can only be at the expense of future enjoyment, in a sense that the use of income is not.

Nevertheless, income no more represents the value of the benefits than does either of the other objective standards. As with them, too, the enjoyment of income is only a small part of the benefits of government. The fact is that each and all of these objective standards beg the whole question by assuming that the benefits are limited to the enjoyments from expenditure, from property, or from income, yet expressly or tacitly the benefits in question are admitted to be far more extensive. No such objective economic equivalent of the value of the service is possible. They do not, therefore, lend any support to the view that value of service is a just basis of taxation.

(4) *Marginal Utility*.—Although Sax claims for his theory that it holds the key to the solution of all the problems involved in other theories of taxation, it properly belongs to the value-of-service theory; only with Sax the value is subjectively determined through the operation of the law of marginal utility. That is, the value of the service is determined by the marginal utility of the tax, which is itself determined by a comparison of the collective needs satisfied with the intensity of private needs that might be satisfied but for the tax—by the relative intensities of collective and private needs.

Now if the satisfaction of collective needs were determined in every respect in the same manner as private needs, much might be said for this subjective valuation of public services. But, in the preceding chapter, we have seen reasons for holding that what is true of private needs is not necessarily true of collective needs. The marginal utility of the goods that would be enjoyed in the satisfaction of private needs may, indeed, express the subjective value of those needs, but this marginal utility does not express the value of the collective needs. This value cannot be determined subjectively any more than it can be determined objectively. It cannot, therefore, form a basis for taxation, still less an ethical basis.

So far we have only negative proof that value of service is not a just basis of taxation. But there is even stronger disproof of this theory, which may be stated in a word. It is, that the whole theory is based upon an entirely false conception of the relation of the individual to the state, and so upon an entirely false conception of the nature of the obligation of the individual to support the state. The ethical basis must connote a more distinctively ethical idea than is contained in the principle of *quid pro quo*, of an economic exchange of service for service.

II. ABILITY AS AN ETHICAL BASIS OF TAXATION

Whatever the accepted basis of taxation, it is always, directly or indirectly, implied that the ultimate end sought is "distributive justice." But more and more the conviction has gained prevalence that this end cannot be attained by a purely political, or purely economic basis, but only upon a basis of distinctively ethical connotations; and hence the more and more is it realized that "benefits," at bottom an economic conception, does not meet this requirement. On the contrary, the term that is universally used to express the basis of the ethical idea of distributive justice in taxation is "faculty," or "ability," with the Germans "ability to pay" (*Leistungsfähigkeit*).

The term ability (*facultas*) is not, however, new to financial science, as Bodinus, as early as the sixteenth century, declared for a universal tax based on ability. We have seen, too, that economists who have accepted the benefit principle have followed Adam Smith in making it equivalent to ability. That is, ability is determined by the benefit received, the benefit determining the ability, not the ability the benefit. But this view of ability begs the question; it gives a new term but not a new basis. But what we want is a change of ideas—a change of basis—since the benefit principle no longer satisfies the moral sense. The best term, as also the common term, for expressing this new basis is "ability"; but whatever its former associations, it must be wholly freed from any alliance with the benefit principle. This is the present tendency, the benefit principle and the ability principle being regarded, as they should be, as two entirely distinct conceptions, and not merely different names for the same thing.

But although the term "ability" is the best expression that we have of the ethical basis of distributive justice in taxation, it is not altogether satisfactory, because of its vague-

ness and indefiniteness of meaning. No single term, however, can express fully all of the principles demanded by justice, though it may contain them by implication, as the logical result of the development of its own content. It is because the term "ability" does meet this requirement that it is, upon the whole, a satisfactory basis of taxation. The ultimate basis of taxation, which we have all along contended is ethical, must carry with itself grounds for the modification and limitation of the two cardinal principles—universality and equality—which is not the case with the political or the economic basis. With these the principle of universality has no exception, and the principle of equality no definite content. The content of "ability," when its implications are fully developed, provides for both. It is, therefore, a distinctively ethical basis. Or ability is the ideal ethical basis of taxation. Its full significance, however, can appear only as we proceed with the development of our thesis in this and in the following chapter.

But there are other reasons why "ability" constitutes the ethical standard of taxation. It is not a mere, vague sentiment, but is the direct expression and outcome of the ethical nature of the individual and of the ethical relations of individuals in the state and to the state. As more fully stated by Cohn: "The demand of equity that individuals are to pay in proportion to their varying pecuniary ability, is accepted so unresistingly within the field of the public economy for the reason, in the first place, that a computation of proportional cost and benefit is, in regard to many very essential services, impossible; and in the second place, and more especially, because the more fundamental phases of the public activity in some degree condition the very existence of the individual in society, so that it appears right and just that these fundamental conditions of human social life should be intimately bound up with the total personal and economic

strength of each individual. The appeal to the principle of the pecuniary ability of the individual in matters of national concern touches our sense of equity so directly and irresistibly because it is a principle of wider scope than that of the economic field alone, and is but a special application of the broad principle of moral solidarity."¹

This view is not only in harmony with, but it is the direct logical consequence of, the conception of the state outlined in the second chapter. The importance of society to the individual that he may become truly a *person*, the paramount importance of the political organization of society—of the state—to the development of the highest social relations and the fullest realization of the ends of social and individual life, the spiritual and ethical nature of these relations growing out of the spiritual and ethical nature of man; in a word, the conception of *man* in society and the state makes it a demand, both of the reason and the ethical sense, that every member of the state should contribute to its support and maintenance in proportion to his *ability to pay*; or the full implication of such a conception carries with it the obligation upon every member of the state, that he *ought* so to contribute—that is, according to his ability. It is not enough that there is a solidarity of interests—a community of interests—but because there is a "moral solidarity"—a community of interests of ethical beings—that ability is so "irresistibly" accepted as the ethical basis of taxation.²

However vague, then, the term "ability" may be, it is clearly the one term that most fully expresses the tax obligation that rests upon the citizens of a state. For a tax according to ability, as a universal proposition, implies just that relation to others that is implied in a moral solidarity. Further, ability to pay implies that the ability is relative to persons, and thereby gives emphasis to the fact, already

¹ *The Science of Finance*, p. 297.

² Cf. Adams, *Public Finance*, p. 330.

pointed out, that the tax obligation can rest only upon persons, since only *persons* can have a membership in and are capable of obligations to the state. True, a tax involves property, but property as incidental to a person. Property, we have said, is the person objectified, and a tax upon property is, therefore, a tax upon persons. But the obligation is not upon the property, but upon the person, as the term ability implies. The term "ability," moreover, has the merit of implying more than personal obligation. Its content is positive in character, and carries with it the idea of *active* participation in the support of the state, corresponding with active participation in the general ends of the state.

But after all that is said, ability to pay is a relative conception. In the first place, it implies relativity to the ability of others; a relativity that follows from the recognition that the tax obligation that rests upon self, likewise rests upon others because it rests upon persons, and because others, equally with the self, are recognized as persons. In the second place, the term is relative to personal wants, for ability to pay taxes has no meaning, or at least lacks in significance, except with reference to the relative ability to satisfy collective and personal wants. For, unless the paramount personal wants are satisfied, there can be no tax for the satisfaction of collective wants. Besides, the person must be given first consideration, since the whole exists for the sake of the person—for the individual. Ethical considerations, in other words, re-enforce the economic.¹ In the third place, since the tax and the satisfaction of private wants require economic goods, ability to pay is relative to some form of material wealth. In brief, "ability," as a basis of taxation, involves the relation of one's economic wealth to his personal and collective wants, compared with the similar relation of every other member of the state.

¹ Cf. *ante*, p. 143 *et seq.*

It is around these relations involved in ability—relation to others, to self, and to economic goods—that the whole problem of just distribution of the tax burden revolves. Only as the content of ability in these relations is gradually unfolded are we able to get at the full meaning of ability, as only in their development are we able to discover the just principles of taxation. For if ability be the true ethical basis of taxation it must contain within itself the ethical principles of taxation, just as the acorn contains the oak; so that in developing its meaning we are developing the principles involved, or implied, in it. Principles of justice are, as it were, attributes of the basis of justice.

It is in the development of these principles that consists the most important and the most difficult part of the problem of justice in taxation. For although the principles must have their root in the basic idea—ability—and be developed logically from it, differences of point of view or of interpretation may lead to opposing or conflicting results. We shall, nevertheless, attempt to develop these principles as they appear to us as the logical consequences of the ideas most naturally connected in the term "ability." The remainder of the present chapter, however, will be devoted to a review of opinions respecting the relation of ability to property, to income, and to subjective sacrifice, at the same time indicating the limitations of each.

1. *Ability and Property.*—The most natural, as also the most obvious, test of economic ability is the amount of property possessed. Ability—faculty (*facultas*)—has throughout the centuries been associated with the idea of property—economic wealth. Cicero somewhere makes *facultas* synonymous with wealth, or possessions, and Coulanges points out that in the ninth century *facultas* signified one's entire property.¹ So again in the sixteenth century, Bodinus,

¹ Coulanges, *The Origin of Property in Land*, p. 72.

in opposing the privileges of the upper classes that then prevailed, declared that taxes should be universal, and should be borne equally by all classes of citizens according to their ability, or faculty (*quae in omnes ordines pro singulorum facultatibus exaequantur*), which he explains to mean according to their wealth, or fortune (*pro cuiusque opibus ac fortunis*).¹

Thus ability—faculty—and property had long been interchangeable terms when ability was first made a basis of taxation; so that it was one and the same thing whether the basis was considered to be property or ability. Still, the root idea was that the tax should be based upon ability to pay, but that this ability was measured by the amount of property or fortune possessed. Now there can be no doubt that fortune, or property, was a fair representation of ability, and so an approximately fair basis of taxation, under the primitive economic conditions that prevailed in early industrial society; when there were no great inequalities of fortune, industries were little diversified and wealth consisted almost wholly of property in land, social wants were few, and social conditions were upon an approximate equality. But under the conditions of modern industrial and social life, where these relations no longer hold, and where there is a growing class of propertyless producers, or, at least, productive agents without capital, it must be clear that property alone affords a very inadequate test of ability; for the ability to satisfy wants—the real test of ability—and, therefore, the ability to contribute to the support of the state, is not conditioned by the personal ownership of property. Besides, even where property is the source of the means of satisfying wants there is not necessarily the same proportionate power of satisfaction, since the means are not necessarily proportionate to the amount of property. For not only is some

¹Quoted by Meyer, *op. cit.*, p. 4.

property unproductive of further means, but productive property is not always equally productive.

Nevertheless, property is an index of ability, even "unproductive" or consumable property; for the amount and character of the property that we possess indicates to a very large extent our power of satisfying our wants, and, therefore, our tax ability. It is, indeed, as an "index," not as an absolute measure, that property is regarded by those who hold it to be synonymous with ability, though the index is necessitated more from practical than from theoretical grounds. Baer, for instance, would base all taxes upon property,¹ because property is a measure of ability. To get at a more accurate relation between property and ability, however, he divides property into three classes—productive property, unproductive property and property whose destination is not yet determined upon.² For each class there is an index, or indices, since the amount cannot be accurately determined directly. For example, the index for productive property is capitalized interest, while for unproductive property the indices are the articles of common consumption, the "ability" of this class of property being reached by consumption taxes—on wines, spirits, tobacco, etc.

But even as an index the property test is wanting in important particulars. It is true that property as a basis of taxation does not mean that the tax should be paid out of property, otherwise the property, and with it the ability, would soon be exhausted. The tax is presumed to be only nominally upon property; in reality it is upon income. That is, the "index" is an index of income, and the real basis of ability is thereby assumed to be income, and not

¹ "Il criterio per giudicare della parità delle condizioni o di loro rapporti in più o in meno non può essere altro che quello dell'importanza delle sostanze, dell'averne, dei beni che si posseggono." *L' Avere e l' Imposta*, p. 19.

² *Ibid.*, p. 32 et seq.

property. But for practical reasons Baer and others would base the tax upon property as the best means of ascertaining income, it being a practical impossibility to determine real income by direct methods. This, too, is the common practice and is a necessity for many forms of income. But it is not less true that many forms of property are, in practice, very imperfect indices of income, or ability; as note, for example, the universal failure of personal property taxes. For income not derived from property a more accurate test is consumption, and consumption taxes, such as those on spirits, tobacco and other luxuries, are a more accurate test of ability.

However important, then, property may be as an index to income, and therefore of ability, it needs to be supplemented by other tests to reach the full tax ability. It is theoretically defective because, being indirect, it affords only a proximate test of the power to satisfy wants; it is practically defective because many forms of property cannot be discovered by the tax assessor. We cannot, therefore, subscribe to the contention of Menier, that the state has no right to inquire into what one makes or does, but only into the share of the national fortune that he possesses.¹

2. *Ability and Income*.—Since Adam Smith first published his famous canons of taxation, property, as a measure of ability, has been commonly interpreted to mean revenue, or income. That there is, indeed, some doubt what was in the mind of Smith when, in explaining the term "abilities," he wrote: "That is, in proportion to the revenue which they respectively enjoy under the protection of the state," may be admitted.² But however this may be, it has generally been understood to mean that ability is measured by income, and it is with this meaning that the first canon has been so

¹ Cf. Menier, *op. cit.*, p. 196.

² *Op. cit.*, p. 414.

universally accepted, it being assumed that Smith stood for the principle of "ability" rather than that of "benefits."

However true it may be that there are circumstances when it is necessary to use property as a measure or index, of income, there can be no doubt but that income is a truer measure of ability than is property. For in income is represented the actual earning power of the individual, the realized capacity of providing the material means for the satisfaction of wants. Moreover, income as a measure of ability is in harmony with the fact we have so often emphasized, that the tax is a tax upon the person—upon his ability to satisfy his wants.

But after all, income is a very vague and indefinite measure of ability. If we are to measure ability by income we must know what is meant by income; also, the character of the income that determines the tax ability, that is, what portion of the total receipts of the individual constitutes his taxable income.

(1) *Meaning of Income.*—By income is generally understood the returns that come in to the individual as the result of his economic activities, or from his control of the economic activities of others. It does not, however, include the total receipts of an industry. These are known as "gross incomes." Income, properly so called, is the "net income" that results after deducting from the gross income the costs of production and the maintenance of the plant. That part of the gross income that is absorbed in costs and maintenance is not a return that is at the disposal of the individual. The expenditure is essential that there may be any return, but it does not of itself add anything to that which was already possessed. Income, in an economic sense, implies an increase of wealth in addition to that which is already possessed, and which comes in within a definite period of time, giving an increased power of satisfying wants

within that period of time. Only net income is such an income.

But the term "income" has been given a more extended meaning, and has been made to include the indirect income from enjoyment, or use, of so-called "unproductive" property, thus giving emphasis to periodic enjoyment rather than to periodic new acquisitions. All income, indeed, is valuable only as it affords means of enjoyment, to the satisfaction of wants. Income is a means, satisfaction the end. Hence possession of property is by some regarded as an addition to the money income derived from gainful occupations, for its possession enables a given money income to satisfy the wants that otherwise remain unsatisfied. Such possessions are houses (occupied by the owner) and their furnishings. Take, for example, A and B, having equal money incomes, but A owning his house, while B rents a house of equal value, say at five hundred dollars per annum. Clearly, five hundred dollars represent the excess of A's income over B's, as measured in the satisfaction of wants. That is, A has five hundred dollars to spend for satisfactions that B cannot enjoy, has five hundred dollars more to dispose of than B has. His "ability," therefore, is greater than B's to the extent of five hundred dollars, other things being equal.

That the same is true of household furnishings, paintings, or other "unproductive" property of this class, is not equally clear. True, if enjoyment is the test of income, such property is an advantage to income, just as is the ownership of a home. Yet the two cases appear to us to be quite different, particularly in the case of luxuries. The enjoyment of these is not income in the sense that house rent saved by ownership is income. They are enjoyments procured by means of income, but are not an addition to income—do not save income—in the sense that this is true of house rent saved.

As a rule (where not from gift or inheritance) they are an index of income, but not themselves income. They do not increase ability; on the contrary, they decrease it. Necessary household furniture should, perhaps, be excluded from this class, but from the practical impossibility of determining where the necessity ends and the luxury begins, no distinction should be made. If, however, with Cohn we regard luxuries as "income consumed in kind,"¹ we must admit with Meyer that its value "is impossible to reckon."²

The mistake, we are inclined to think, lies in making enjoyment the sole criterion of income. Because income has value only as it is a means of enjoyment, it does not follow that all means of enjoyment are income. If such is the test of income, then there is little that is not income. All consumable goods would be income—food, clothing, shelter, etc., etc. Yet how small would be the income of the miser, however large his hoardings.³ This is a needless confusion of ideas. For our purposes, at least, luxuries should not be regarded as income, but only as indices of income, and this is really the way in which Cohn regards them.⁴ The income that we are seeking is the income that brings in annually positive acquisitions of material goods, disposable for the satisfaction of wants, and whether the acquisition is direct or indirect. Luxuries, we repeat, do not constitute such an income. They do not increase the sum of disposable goods in the sense that this is true of the ownership of a house. They represent satisfactions enjoyed—income expended—but they add nothing to ability, but only indicate its extent.

¹ Cohn, *op. cit.*, p. 359.

² Meyer, *op. cit.*, pp. 327-8.

³ Cf. Rogers' criticism of Adam Smith's first canon in note to his edition of *Wealth of Nations*, p. 414. Much of this criticism is strained, particularly where Rogers concludes that if the emphasis of Smith is on "protection," then women and children should pay heavier taxes. The protection clearly refers to "revenue," not to persons.

⁴ Cf. for example, *op. cit.*, pp. 360-1.

(2) *Taxable Income*.—If we are right in our determination of the nature of income, we have next to inquire what is the character of taxable income, the income that determines tax ability. Evidently this cannot be gross income; for this would be, in effect, a tax upon the source of income, whose tendency would be the gradual extinction of income, of satisfactions, and thereby of ability. Costs and maintenance should, therefore, be rigidly excluded from taxable income.¹ (This is not saying that for practical reasons there should not be nominal taxes on gross income or capital.) What is left after these deductions is a net income. This, or some part of it, must then be the taxable income, the income that determines tax ability. Whether it is the whole or a part only of the net income that is the taxable income, economists do not agree.

With the earlier economists, following the English school, the taxable income was held to be the "pure" income—the net income minus the necessary cost of subsistence. That is, there was assumed to be no ability to pay taxes until the income exceeded that required to supply the necessities of life, since in the satisfaction of wants there is no "clear" income until the stage of enjoyments is reached.² This view of income, it is true, is peculiar rather to the benefit than to the ability theory of taxation, it being assumed that there can be no benefits of government until after the means of subsistence are provided for. But it has its advocates also in those who accept the ability basis of taxation, and, as we shall see later, not without much show of reason.

But largely through the influence of the German economists, the net income is now far more generally accepted as the true taxable income; at least nominally so. That is, it

¹ "Man darf die Henne nicht schlachten welche goldene Eier legt." Schäffle, *Grundsätze*, p. 57.

² Cf. Stein, *op. cit.*, p. 230.

is considered as the theoretical ideal, but is negated as an ideal by the admission of exemptions. According to Wagner, the "net" income theory is the logic of the financial view-point, while the "clear" income theory is the logic of the social-political view-point.¹ The chief defense of the net income theory is found in the indispensableness of the state to the individual. Being a necessity, it should be placed upon an equality with other necessities in respect to satisfaction. This would seem to follow, too, from the nature of the state as we have regarded it; also from both the political and the economic basis of taxation. That is, from the universal obligations of citizenship, and from the seemingly relative importance of collective and private wants.

When, however, the taxable income is viewed from the standpoint of ability it is not so self-evident that it is represented by net income; unless, indeed, we assume that net income measures ability, in which case we have but a vicious circle. If, as we think Schäffle justly says: "Ability is an expression for how much a taxable unit can give up to the support of the state without injury to his own relative support,"² it is questionable if there is a taxable income—ability—until a "clear" income appears—an income over and above the necessities of life. Whether, however, the taxable income is a "net" or a "clear" income; whether, that is, ability is determined by net or clear income, is a question that involves political and ethical considerations that are inseparable from the problem of the exemption of the minimum of subsistence. In other words, it involves the problem of the justice of exemptions. We may, therefore, postpone further discussion of this question until we take up the problem of exemptions in the following chapter. But it is a question, also, whether or not ability is affected by source, permanence, and size of income; but this is a

¹ *Op. cit.*, p. 330.

² *Grundsätze*, p. 23.

question of rates, which like that of exemption, is a question of principles, and will, therefore, also be deferred to the following chapter. Here, we wish only to emphasize the fact that a prime condition of "ability" is a net income. That it is not the only condition we shall see later.

A somewhat different criterion of ability-determining income was advocated by the late President Walker. According to him ability is determined, not by actual income but by the capacity, or *faculty*, to produce income; not by realized but by realizable income. Accordingly he defined ability (he used the term *faculty*) as the "native or acquired power of production," a tax on this basis being the "most equitable form of public contribution."¹ Property, expenditure, and revenue all come in for criticism as a basis of taxation. Property, because a tax on property "constitutes a penalty on saving (p. 3); expenditure, because "the revenue rights of the state attach equally to every portion of private revenue, irrespective of the consideration whether any such portion is to be spent or saved" (p. 11), and because any exemption of expenditure, "on the ground that it is to be used for the public good," involves the right, which may become a duty of the state, "to see that such wealth is, in fact, in all respects and at all times put to the best possible use;" and it is added: "If this is not socialism of the rankest sort, I should be troubled to define socialism" (p. 12); revenue, because "the revenue tax lays the heavier burden upon him who most fully and diligently uses his abilities and opportunities. It even accepts indolence, shiftlessness and worthlessness as a sufficient ground for excuse from public contributions" (p. 14). Indeed, "to tax wealth instead of revenue is to put a premium upon self-indulgence, in the form of expenditure for present enjoyment," while "to tax revenue instead of faculty is to

¹ Francis A. Walker, "The Basis of Taxation," in *Polit. Sci. Quart.*, vol. iii, p. 14.

put a premium upon self-indulgence in the form of indolence, the waste of opportunities, the abuse of natural powers." Hence, "a faculty tax constitutes the only theoretically just form of taxation, men being required to serve the state in the degree in which they have ability to serve themselves,"¹ any departure from this rule constituting a departure from justice.

As a purely theoretical ideal this view of the tax basis is, perhaps, sound. It has the merit of emphasizing the necessity of positive effort; it justly expresses the moral obligation resting upon every citizen to put forth his fullest energies and powers to the support of the state on whose maintenance depends his civilized existence; it justly emphasizes, also, the moral obligation resting upon the individual because of his ethical relations to his fellow men, growing out of his and their natures as spiritual beings—as persons—and the identity of their mutual relations to the state.

But if this is the ideal, it is an ideal to be realized only in the millenium. Under existing conditions of society it cannot be admitted that departure from it is departure from justice. From the practical viewpoint the chief objections to this theory of ability are: it is utopian; it necessitates most arbitrary powers of government; it is too objective. (a) It is utopian since there is no way of determining whether the "native or acquired powers of production" have been exercised to their utmost capacity, if material results are not taken as the expression of the potential capacity under existing social and economic conditions (as no doubt in many cases they cannot be). (b) The only other alternative is the determination of these powers by the government. But this

¹ *Ibid.* p. 15. To the same effect Mlle. Royer writes: "Nous devons contribuer de nos personnes, de nos facultés intellectuelles et de nos forces physiques, comme de cette extension extérieure de notre être que nous appelons nos biens, nos propriétés." *Théorie de l'Impôt*, p. 24.

could not be except by most arbitrary methods and with most indifferent results. Besides, such a method of determination would defeat itself, since the highest productive efficiency would not be obtained under such a system of governmental slavery. Moreover, when a government assumes the function of seeing that every individual develops his latent power, and that no one be allowed to shift his burden upon others by "indolence, shiftlessness and worthlessness," logically and justly it will be compelled to guarantee the conditions of their exercise, just as the logic of the Elizabethan Poor Laws was the public workhouse; for these powers cannot be exercised where the means are wholly wanting, any more than the "vagabond" could work without tools and materials. Still more, with such functions it would "unmistakably be the right, and it might even become the duty of the state to see that such powers are, in fact, in all respects and at all times put to the best possible use. But, "if this is not socialism of the rankest sort I should be troubled to define socialism." In fact, no action of the government could be more paternal or more arbitrary.¹ (c) Finally, this view of the ability is too subjective, too indeterminate, to be of practical value. In determining the ability of the taxpayer, the government is bound of necessity to measure his ability by objective, not by imaginary results. In short, we must, as Spinoza would say, deal with adequate ideas of the understanding, not with confused ideas of the imagination. Or actual income, not the theoretical possibilities of income, is the safest guide to real tax ability.

Yet it must be admitted that the mere objective fact of income is but one factor in the determination of tax ability.

¹ Neumann opposes to the basing of the tax on the ability to produce the following objection: "Die Ermittlung darüber wie viele Jemand nach seiner körperlichen oder geistlichen Fähigkeiten noch erwerben könnte, dürften schwer zum Ziele führen und entsetzlichster Willkür Thür und Thor öffnen." *Die Progressive Einkommensteuer*, p. 172.

Not only must we take account of income, but also of the legitimate demands upon that income. Or, from a different point of view, it is a question of the effect upon the taxpayer of the deprivation of a part of his income for the support of the state—the effect of contributions for his collective wants upon the satisfaction of his private wants. This suggests a negative and subjective determination of ability: That it is not income that determines it, but the sacrifices endured by the taxpayer in the way of the non-satisfaction of private wants, of the loss of personal enjoyments. This view has suggested the sacrifice theory of taxation, or ability.

III ABILITY AND SACRIFICE

1. *Mill*.—The first writer clearly to substitute subjective sacrifice for objective ability, as measured by revenue, as the basis of taxation, was John Stuart Mill.¹ With Mill the basic idea in the distribution of taxes is *sacrifice*. The aim of justice in taxation is to effect an “equality of sacrifice;” not the giving up of equal shares of the means of enjoyment—revenue—but the giving up of equal enjoyments. “The true principle of taxation I conceive to be, not that it shall be equal in proportion to means, but that it shall, as far as possible, demand an equal sacrifice from all,” *i. e.*, a “proportional sacrifice of enjoyments.”²

This is Mill's substitute for taxation “according to ability.” In a sense it is his explanation of the meaning of ability, though to Mill the idea of sacrifice is not so much an interpretation of ability, as it is a new principle of taxation. For with him the fundamental idea of justice is to be explained, not in terms of ability, but in terms of sacrifice. The ideal is, “equality of sacrifice;” that each person

¹ *Political Economy*, bk. v, ch. 2, § 2.

² *Report of the Tax Commission of 1852*, Mill's testimony, pp. 286, 312.

"shall feel neither more nor less inconvenience from his share of the payment than every other person experiences from his." ¹

This view of the basis of justice in taxation is the natural result of the reflections of a philosophic mind on the obligations of the citizen to the state, and is no doubt influenced by a utilitarian ethics whose highest principle is the greatest possible sum of pleasure to each consistent with the like pleasure of others. It emphasizes the idea that the obligation of the individual to the state calls for a sacrifice, a giving up, rather than an active, positive effort, and in this respect is directly opposite to the theory of Walker. From the viewpoint of Mill, "equality of sacrifice" is clearly the best expression we have of the theoretical ideal of the obligation resting upon the taxpayer; but, to our mind, this negative conception of our obligations does not bring out so clearly and fully our relations to the state as does the positive conception that calls for effort, activity, the fullest exercise of our faculties—taxation according to ability. We are inclined to think, too, that, theoretically at least, the two conceptions are quite distinct, representing distinct bases of taxation.

Practically and objectively, however, there is no difference. For we find that Mill, in his testimony before the Tax Commission, is compelled to appeal to an objective standard—income or property—for the determination of the equal sacrifices. Ideally, he thinks, that equality of sacrifice is a proportion to what one is able to spend—his income; but for practical reasons—the low state of morality—there should be an "equal sacrifice according to means," ² which is just what Mill has said is not the true principle of taxation. In short, viewed with respect to their objective expression, ability and sacrifice are but two aspects of the

¹ *Political Economy*, v. 2, § 2.

² See *Testimony*, p. 301 *et seq.*

same idea, the *tertium quid* being income, by which Mill means a "clear" income, including in the deduction not only the necessities but also the lesser comforts, the taxable income being that part of income that is spent upon luxuries. So that equality of sacrifice comes to this: That each should "pay a fixed proportion, not of his whole means, but of his superfluities,"¹ just what taxation according to ability means to the advocate of the clear income theory.

2. *Wagner and Neumann.*—Since the time of Mill "equality of sacrifice" has come to be very generally accepted as expressive of the basis of just principles of taxation, but it is not considered as a distinct principle, but only as the subjective form of ability. Yet, while some, like Mill, find in the conception of sacrifice the true basis of justice, others find that this basis is best expressed in the conception of ability. Wagner, for example, accepts the sacrifice theory of Mill but thinks that the true norm of taxation is the economic ability to pay (*wirtschaftliche Leistungsfähigkeit*), but that the sacrifice theory shows more definitely how equality in taxation—taxation according to ability—is to be accomplished,² or the meaning of ability. So likewise Neumann: "It is through a consideration of the sacrifice imposed that the measure of ability acquires definite form and becomes useful for a system of taxation."³

That is, both Wagner and Neumann find in the idea of "taxation according to ability" the real norm or demand of justice, but hold that the attainment of this norm is best accomplished in terms of sacrifice. This, I think, is the more usual form in which the ability and sacrifice theories

¹ *Political Economy*, v. 2, § 3.

² "Hier dient diese Theorie [Opfertheorie] dazu, genauer den Weg zu weisen wie die Gleichmässigkeit der Besteuerung durchzuführen ist." Wagner, *Finanzw.* ii, p. 349.

³ Neumann, *Progressive Einkommensteuer*, p. 62.

are held. And it has the merit of at once emphasizing the fact that in the positive idea of ability—effort—is the real basis of the tax obligation; and at the same time, also, that every tax necessarily involves the sacrifice of personal satisfactions, the degree of the sacrifice marking the degree of ability, while the relative sacrifice of each to the sacrifice of others, marks the relative tax ability. Hence, accordingly, equal taxation according to ability is theoretically attained by effecting an equality of sacrifice.

In determining the equality of sacrifice, however, Wagner, Neumann, and others are compelled, like Mill, to revert to objective standards. Indeed, with most the practical standard is one rather of objective than of subjective sacrifice—the effect upon objective economic conditions, rather than upon subjective feelings. But Wagner and Neumann go even farther than does Mill in making allowances for the external circumstances that affect the sacrifice and thereby determine the ability; for they consider not only the source, size and character of the income, but also the circumstances and condition—health, indebtedness, etc.—of those dependent upon it. By considerations such as these, it is assumed, an equality of sacrifice may be attained, or, that “taxes will occasion equal efforts and sacrifices over against other needs.”¹

3. *Meyer*.—Nominally opposed to the theory of Wagner and Neumann, and in form more nearly akin to the view of Mill, is the theory of Meyer, who insists that equality of subjective sacrifice is the true tax basis, but admits that this equality can be effected only through a consideration of the “ability to pay.”² The difference, however, is more in seeming than in reality, except in the emphasis given to the central idea that lies at the basis of a just distribution of taxes, the emphasis being given in the one case to ability,

¹ Neumann, *ibid.*, p. 62.

² Cf. Meyer, *op. cit.*, §§ 50 and 53.

and in the other to the idea of sacrifice. But there is no difference with respect to the objective and practical standard of ability, or sacrifice.

The theory of Meyer, however, is not a mere restatement nor a mere expansion of the theory of Mill. It is peculiar to the theory of Meyer, as distinguished from the preceding views of sacrifice, that he gives greater definiteness to the meaning of the subjective sacrifice occasioned by the tax, by connecting it with the intensities of our "marginal wants," the intensity of the marginal wants occasioned by the tax, measuring the degree of the subjective sacrifice. But Meyer understands by the marginal want affected by the tax, not the last want unsatisfied because of the tax, but the last want attaining satisfaction.¹ In this view of the marginal want effected by the tax Meyer seems to think that he has discovered some new principle, but we fail to see what possible difference it can make, in measuring the subjective effect of a tax, whether we consider the effect upon the intensity of the last need attaining satisfaction, or upon the intensity of the first want given up—unsatisfied—because of the tax. If equality of sacrifice is the aim, what possible difference can it make whether the equality is established between the last want attaining satisfaction, or the want unsatisfied because of the tax—the first want that would be satisfied if the tax were removed? If there is an "equality" in the first case, there is, of necessity, equality in the second case. The distinction is without a real difference.

That Meyer has given us a more definite conception of the nature of the sacrifice occasioned by the tax, and a more

¹ "Das Opfer nicht in der Intensität der in Folge der Steuer unbefriedigt bleibenden Bedürfnisse, sondern in dem Masse erblicken in welchem die durchschnittliche Intensität der letzten zur Befriedigung gelangenden Bedürfnisse in Folge der Steuer erhöht wird." Meyer, *op. cit.*, p. 332.

definite standard for measuring the subjective equality, than did Mill, must be admitted, though in result there is no real difference. The equality in the intensity of the last need attaining satisfaction is precisely the equality of Mill—that one person should *feel* the tax no more than every other person feels it. In neither case is the equality thought of as an absolute equality, but only that the “feeling” or the “intensity” is for each person, under the circumstances in which he is placed, exactly what it is for every person other under the circumstances in which he is placed. That is, it is a purely relative equality.

Has Meyer, then, added anything to the solution of the problem of justice in taxation by his reduction of “equality” to a comparison of “marginal wants,” or rather of the intensities of marginal wants? True, as a purely theoretical conception, it would be difficult to find a more exact, or more precise, conception of the idea of “equality of sacrifice” than is to be found in the conception of a relative equality of intensities—*i. e.*, of sacrifices—of marginal wants (of either margin) as occasioned by the tax. And true, also, that the conception of “ability” finds, perhaps, its most perfect subjective expression in the idea of a relation between the intensity of collective wants and the intensity of marginal personal wants; while relative ability finds its most perfect subjective expression in the idea that tax contributions should produce the same relative effects upon the satisfaction of the marginal, personal wants of every taxpayer. We cannot, therefore, agree with Leroy-Beaulieu that the sacrifice theory is a piece of pure sentimentality.¹

On the other hand, it must be admitted that this subjective comparison of marginal wants is of little or no practical importance, since in either case, as we have seen, they can be interpreted only by reference to objective facts—to economic

¹ “Cette théorie est simplement sentimentale.” *Op. cit.*, i, p. 140.

conditions and personal circumstances. But if, however, we retain the idea of sacrifice along with that of ability, it can be of little consequence whether we consider "equality of sacrifice" as explaining "ability," or ability as explaining equality of sacrifice; although, as we have pointed out, the conception of "ability" best expresses the ideal of justice. Yet in either case or whether, with Professor Ely and others, we regard "equality of sacrifice" and "ability to pay" as but different expressions of the same fundamental idea,¹ we are involved in a vicious circle. The solution of this circle, according to Sax, is to be found in his great discovery—the Theory of Equivalence.

4. *Sax*.—From the fact that Sax disclaims ethics in finance, and believes that the whole problem of taxation is a purely economic problem, it might seem, at first thought, that a discussion of his theory is out of place in a discussion of the ethical basis of taxation. But in spite of any disclaimer, the fact is that Sax, equally with every other writer on the theory of taxation, has in mind as an ultimate end an ethical basis and ethical principles; only with Sax, as we have previously seen, the fulfillment of the ethical end is to be attained by the free play of economic forces. It is proper, therefore, to examine his theory of justice and to inquire whether he has made any real contribution, in the solution of the problem, to the thought of his predecessors.

We have already sufficiently discussed the general features of the theory of Sax, and have found that his theory, like that of Meyer, is founded upon the intensity of marginal wants as resulting from the tax. It is, however, to the merit of Sax that he emphasizes rather the "satisfactions" than the "sacrifices,"² thus calling attention to the positive,

¹ Cf. Ely, *Taxation in American Cities*, pp. 80 and 237.

² Sax, "Die Progressivsteuer," in *Zeitschrift für Volkswirtschaft, Socialpolitik und Verwaltung*, Erster Band, I Heft, p. 87.

instead of the negative, relations of the individual to the state. In the scale of wants, too, Sax brings out more clearly the inclusion of collective wants, the taxpayer, theoretically at least, making his comparisons between his marginal collective and marginal private wants; whereas with Meyer the comparison is virtually between the marginal private wants before and after the tax; or, when relatively considered, it is between the marginal want (as affected by the tax) of different taxpayers—a comparison impossible to make except through objective standards. In reality, however, with Sax, no less than with Meyer, the comparison is between the intensities of marginal private wants as they are affected by the tax, and he gives to these wants, also, the same objective reference.

What, then, according to Sax, is the standard of justice? In the first place, Sax makes no effort to refute the ability and sacrifice theories, further than to maintain that in themselves they explain nothing; just as, to the utilitarian economist, the law of "demand and supply" is an explanation of economic facts that does not explain—the ultimate, efficient cause being wanting, and there being no third term of comparison, other than that of "general feelings." What Sax seeks to do, then, is not to overthrow "ability" or "sacrifice" as a basis of taxation, but to supply the *tertium comparationis* that gives them meaning, makes them intelligible. This "*tertium*," as we saw, Sax finds in "sensation." For the determination of ability or sacrifice lies in a comparison of the intensities of marginal needs, before and after the imposition of a tax; and "all needs have, without distinction of ends to which they are referred, a *tertium comparationis* in sensation."¹

Hence, therefore, the problem of tax distribution—taxation according to ability, equality of sacrifice—revolves

¹ *Grundlegung*, p. 194.

about sensation, and when "reduced to a nutshell," we find it to be, "that our tax payments should be equivalent,"¹ *i. e.*, should effect equivalent sensations. And when this is accomplished distributive justice will be attained, because it will be the fulfilment of economic laws.² Moreover, it is in the "equivalence" of sensations resulting from the imposition of a tax that ability and equality of sacrifice for the first time find a complete, ultimate explanation.

But in what respect does this "equivalence of sensations" differ from "equality of sacrifice" as understood by Meyer—the equal sacrifice of enjoyments as measured by the intensity of feeling (of sensation) of the marginal wants attaining satisfaction after the payment of the tax? The great discovery of the *tertium comparationis* is not, therefore, the discovery of Sax. In short, with Sax, equally with Meyer, the standard of justice in taxation is equality of sacrifice—the production of an equal (= equivalent) increase in the intensity of feeling of the marginal want satisfied, or of the marginal want unsatisfied, because of the tax. Thus, that "equivalence of sensations"—*i. e.*, of sacrifice—is only "equality of sacrifice" in a new dress is clear; also, from the fuller statement of the law of "equivalence:" that "every individual shall value the goods taken from him just as highly as every other individual values those taken from him, their respective stations in life being taken into consideration,"³ a formula given by Mill forty years previously as expressing the meaning of "equality of sacrifice."

Yet Sax, himself, does not admit that his theory of sacrifice is at all in agreement with that of Meyer. He points out that Meyer regards the wants within each group of wants as having the same intensity, and insists, no doubt more correctly, that they have varying intensities. Accordingly, he accuses Meyer of making equality of sacrifice mean

¹ *Die Progressivsteuer*, p. 90.

² *Ibid.*, p. 89.

³ *Grundlegung*, p. 514.

a loss of equal utilities; whereas, says Sax, "equal sacrifice is not the dispensing with equal enjoyments, but with equal parts of respective enjoyments [within the different groups]. That is, by equal sacrifice is not meant absolutely equal, but relatively equal sacrifices;" or, "that the enjoyments that each person loses by means of the tax shall stand in the same relation to the total enjoyment made possible by means of his income."¹ But the difference is purely verbal so far as it has reference to the character of equality. Absolute equality is, no doubt, just as "unthinkable" to Meyer as it is to Sax. Nevertheless, we may agree with Sax that "equivalence" is a better term than "equality," as being less ambiguous; and that "equivalence of sensation" expresses with greater definiteness than "equality of sacrifice" the ideal of distributive justice.

It is the further boast of Sax that equivalence of sensation for the first time also explains the meaning of justice in taxation. But it is rather a definition than an explanation. Still, the claim is not wholly without its reason. Not only because ability and sacrifice, subjectively considered, are ultimately resolvable into sensation—ability having reference more to the sensation of satisfaction, and sacrifice to the sensation of non-satisfaction; but also, from the viewpoint of Hedonistic ethics and utilitarian economics, between which sensation—the ultimate fact of consciousness—constitutes a uniting bond; a *tertium comparationis*, pleasurable sensation—*i. e.*, satisfaction—being the ultimate end of both. Still more, because of this reference of the economic and ethical to sensation, and because of the competition resulting from the fact that every individual is actuated by the same motives, the same sensations, it is assumed that each individual determines for himself the realization of the ethical

¹ *Die Progressivsteuer*, p. 55.

ideal—equivalent sensations = equality of sacrifice = taxation according to ability.

But all this is ideal. The individual does not impose taxes upon himself, but through his representatives, and these representatives can interpret the sensations of their constituents only through objective signs, through the objective conditions that produce the sensations. It is these objective signs, which are not a whit different with Sax from what they are with Wagner or Meyer, that constitute the objective, practical *tertium comparationis* between ability and sacrifice and explain their meaning, that gives the practical solution to the riddle of the circle. However indefinite this solution may be, it is the only practical one. While, then, Sax may have added to the definiteness of the theory of subjective sacrifice, he has added nothing to the practical solution of the problem of justice.

5. *The Dutch Economists*.¹—Accepting "equality of sacrifice" as the ideal of justice in taxation, the mathematical economists of Holland have gone farther than any other economists in their attempt to give to the idea—equality of sacrifice—precision of meaning. They apparently start from the position of Meyer, that within every group of needs there is the same intensity throughout, together with the fact that the order of the satisfaction of needs varies inversely with the means of their satisfaction—with income. That is, only those with the larger incomes can satisfy the least intensive group of needs; so that that group of needs affected by the tax is necessarily the most intensive of unsatisfied needs, or the least intensive of satisfied needs.

Assuming, then, decreasing groups, or grades, of needs

¹ Pierson, Cohen-Stewart and Mees. I regret that my knowledge of this school of economists is only second hand, my acquaintance with them being limited to the exposition of Sax in *Die Progressivsteuer*, already referred to, and to Professor Seligman's account in his *Progressive Taxation*, pp. 137-144.

with each decreasing grade satisfied by correspondingly increasing incomes, we have the fact that the marginal utility of incomes decreases as the incomes increase, since less intensive needs are satisfied by them. Again, with incomes equally increasing the difference between the intensities of the unsatisfied needs (or the last satisfied), on account of the tax, grows constantly less as the incomes increase; or the difference between the intensities of unsatisfied needs is less with the larger incomes than it is with the smaller incomes. Hence, every increment of tax, corresponding to an increment of income, has a less marginal utility than the next preceding increment.

With these facts before us the problem of determining equality of sacrifice is apparently very simple. For all that is now necessary, is to *assume* a fixed gradation in the decrease of the marginal utility of every increment of income, and a corresponding decrease in the marginal utility of every increment of tax. Then the sum of the marginal utilities of the different increments of income and of the tax will represent respectively the total utility of income and of the tax. If, now, we divide the total utility of the tax by the total utility of the corresponding income we shall ascertain the per cent. that the total tax is of the total income upon which it is assessed. In the same way percentages may be found for every grade of income. In every case this percentage will be the percentage that any given tax bears to the total utility of its corresponding income. The series of percentages thus obtained would measure the sacrifice that a proportional tax would occasion for every grade of income.

Now it must be very clear, as indeed Cohen-Steuart himself points out,¹ that the gradation in the series of percentages must depend entirely upon the numbers *assumed* to

¹ See Sax, *Die Progressivsteuer*, p. 76.

represent the marginal utilities of the increments of income and of the tax. Only, however, when the tax is exactly the same per cent. of the total utilities of the different grades of income can equality of sacrifice be attained. To produce this equality, therefore, all that is necessary is, to find such a tax rate as will yield a tax whose total utility divided by the total utility of the income paying the tax will be the same quota for every income. In brief, the tax should be such that the total utility of the tax of every individual will be the same per cent. of the total utility of his income as the total utility of the tax of every other individual is of the total utility of his income. Or, "Tax quota and income reduced to units of utility must show the same relation to every tax-bearer, since herein consists the equality of sacrifice."¹

The problem of effecting an equality of sacrifice is, then, the problem of finding such a tax rate for every income that the tax will take the same quota of the total utility of every income. Clearly everything depends upon the series of numbers taken to represent the marginal utilities of the increments of tax and of income. But whatever series we may choose, any other series, as Cohen-Steuart admits, would be equally legitimate. Hence, accordingly, it is possible, by a clever manipulation of an arbitrary series of numbers representing utilities, to prove that almost any system of tax rates is necessary to produce an equality of sacrifice—as constant, increasing or decreasing rates.

But this fact does not shake the faith of Cohen-Steuart in the possibility of a mathematical determination of equality of sacrifice. He therefore thinks to avoid the dilemma by assuming two, instead of one, series of decreasing marginal utilities with increasing incomes; also that the truth lies somewhere between these two series, which are supposed to

¹ Sax, *Die Progressivsteuer*, p. 57.

represent the two extremes of possible decreasing utilities. In the series that decreases more slowly the rate of increase is assumed to be inversely proportional to the cube root of the fourth power of the amount of the income; while in the other series—that having the more rapid decrease—the decrease is assumed to be inversely proportional to the second power of the amount of the income. From these two rules is deduced the following formula for equalizing the sacrifice of total utilities in the imposition of a tax: “An arithmetical increase of the tax rate with a geometrical increase of income.”¹

Here, indeed, we have the problem reduced to mathematical exactness. But unfortunately Cohen-Steuart proceeds upon assumptions equally arbitrary and equally imaginary with those of the other Belgian economists, whose theories he rejects. All alike, as Sax says, attempt to prove a truth by groundless assumptions. But, in fact, assumption lies at the basis of every theory of sacrifice, and we may, therefore, conclude with Sax that the sacrifice theory in itself is insoluble.* As to his own theory, Sax, of course, believes that he has avoided all assumption, and it must be admitted that his theory contains no such wild assumptions as are found in the Belgian economists. Indeed, his whole theory is based upon one of the most ultimate facts of conscious life-sensation. It is in the development of his thesis that what appears to us unwarranted assumptions make their appearance, particularly with reference to the assumed power of the individual over the satisfaction of his collective wants. At any rate, after all the elaborate development of his subjective theory, Sax is compelled to conclude that “justice merely forbids that a tax be imposed upon any one that is in contradiction with his economic relations;”³ in other words, with his “ability.” The prevention of this “contra-

¹ Quoted by Sax, *ibid.*, p. 81.

² *Ibid.*, p. 83.

³ *Ibid.*, p. 63.

diction" must be left to the officials of the government—to their "sensations" quite as much as to the "sensation" of the taxpayer. This conclusion is that of every sacrifice theory.

6. *Edgeworth.* Another interpretation of the sacrifice theory is given by Professor Edgeworth in his able article on "The Pure Theory of Taxation."¹ Sacrifice is accepted as containing the true principle of taxation; but it is maintained that neither "equal" nor "proportional" sacrifice—as held respectively by Sidgwick and Cohen-Steuart—correctly expresses the fundamental idea which the principle involves. The true notion of equity in taxation finds its more correct expression in the term *like sacrifice*, which constitutes the common genus of which "equal" and "proportional" sacrifice are but species.* But "like sacrifice," otherwise expressed, is an *equi-marginal sacrifice*, which we take to mean an absolute equality of the marginal utilities sacrificed—the marginal disutilities occasioned—on account of the tax. That these marginal sacrifices, or disutilities, should be at a minimum is an imperative demand of utilitarian ethics. Hence, an "equi-marginal sacrifice" finds its most perfect expression in a *minimum sacrifice*, to which principle the true basis of taxation is ultimately reduced. It is not claimed, however, that there is any real opposition between this view and that of "equal" or "proportional" sacrifice. On the contrary, it is intimated that both equal and proportional sacrifice are notions that show a confusion in the minds of their advocates for *equi-marginal sacrifice*, itself leading to *minimum sacrifice*.³

Like other utilitarian economists Professor Edgeworth assumes as the basis of his argument "the greatest happi-

¹ *Economic Journal*, vol. vii. This article did not come to my notice until this and the following chapters were written.

² *Ibid.*, p. 557.

³ *Ibid.*, pp. 564-5.

ness principle," though in a "slightly modified" form. That is, in its application to social phenomena, which are not determined by competitive action, the principle must be interpreted to mean: not the greatest sum of happiness for each of the two or more parties concerned, taken individually; but "that arrangement which conduces to the greatest sum-total welfare of both parties, subject to the condition that neither should lose by the contract." In other words, in its application to political problems the greatest happiness principle must be understood to mean the greatest sum-total of utility for the community—*i. e.*, of collective utility—not the greatest sum for each individual; though "in the long run of various cases, the maximum sum-total of utility corresponds to the maximum individual utility." For, "of all principles of distribution which would afford him now a greater, now a smaller proportional sum-total utility obtainable on each occasion, the principle that the collective utility should be on each occasion a maximum is most likely to afford the greatest utility in the long run to him individually."¹

Applied to taxation the principle means that taxes should be so distributed that the maximum total net utility will be realized, or the minimum of total disutility. For "the condition that the total net utility procured by taxation should be a maximum reduces to the condition that the total disutility should be a minimum." Hence "it follows in general that the marginal disutility incurred by each taxpayer should be the same." But to produce such an equality would be to level all fortunes, which would produce the result: that "the richer should be taxed for the benefit of the poorer up to the point at which complete equality of fortune is attained." This is, indeed, the acme of socialism, "but it is immediately clouded over by doubts and reservations."²

¹ *Economic Journal*, vol. vii, p. 552.

² *Ibid.*, p. 553.

These "doubts and reservations" that stand in opposition and modify the logical execution of the minimum principle, are such as have been noted by Mill, Sidgwick and others: That there would result a lessening of the amount to be distributed, since such a system would inculcate a tendency to leisure rather than to industry; that it would result in an increase of population, which would ultimately reduce the amount of wages, both by the increased competition of numbers and by a decrease of efficiency. But further (except upon the false assumption of an equality of natures), there are different capacities for happiness, which, on the principle of minimum disutility, involves an unequal distribution of the tax. Still further, a progressive rate, which the unmodified principle implies, would produce a check to saving, and so "would check the augmentation of the community's wealth," though this loss is "to be set off against a probable increase of saving among the poorer classes." So likewise the principle of minimum sacrifice justifies differential rates on account of the size and permanence of incomes, the number of children, age, etc. But with such reservations as the above in the practical application of the principle, it still remains true that *minimum sacrifice*, the direct emanation of pure utilitarianism, "is the sovereign principle of taxation."¹

And yet this principle affords us no definite data for the determination of rates. The rate must depend upon the relation existing between the decrease of utility and the increase of income. According to Cohen-Steuart the rate of the decrease of the utility is proportional to the increase of the income. Professor Edgeworth, on the other hand, maintains that the decrease of the former is at a more rapid rate than the increase of the latter.² But the exact ratio is theoretically indeterminate. And hence from the view-point of

¹ *Economic Journal*, vol. vii, p. 556.

² *Ibid.*, p. 560.

pure theory it cannot be determined what rate of taxation would effect a minimum sacrifice. About all that can be said is that the tax rate should be progressive within the limits of the above reservations.

Such, in brief, are the main points in Professor Edgeworth's interpretation of the "sacrifice theory" as a basis of taxation. And in this restatement important modifications of the theory are made. It is to us, indeed, of no little significance that we have the weight of Professor Edgeworth's authority—himself a utilitarian economist—in support of the contention of the preceding pages: that the principles of private economic activity are not, as supposed by Sax and others, applicable to the economic activity of political or collective life.¹ As Professor Edgeworth points out, the true analogy is not that of economic bargains governed by competition, but that of economic agreements between associations of employers and employees; "where the action of self-interest being suspended by mutual opposition, the more delicate force of amity, which even in economic man is not entirely wanting, may become felt."²

Yet even in its modified form we are not convinced that the sacrifice theory affords a better statement of the basis of taxation than does the ability theory; nor do we see any reasons for changing our previous criticism of the former theory. In fact, Prof. Edgeworth does not claim to do more than to bring out a little more definitely what was already implied in Mill, Sidgwick, Meyer and others. At any rate, as we have understood these authors, the marginal sacrifice occasioned by the tax has meant an "equi-marginal" sacrifice; one in which the tax imposes exactly the same sacrifice upon every taxpayer, though not of absolutely equal amounts, viewed objectively. Yet "equi-marginal" has the merit of giving us a more definite expression of the idea in-

¹ *Economic Journal*, vol. vii, p. 551.

² *Ibid.*, p. 552.

volved. But whether viewed as "equal," "proportional," or "equi-marginal," the conception of sacrifice affords but a most intangible basis for taxation—a basis, as Professor Edgeworth admits, that is hedged by "doubts and reservations."

Again, it may be admitted from a certain point of view that the procurement of the greatest amount of happiness—or the greatest sum-total of utility, or the minimum of disutility—is the true aim of all collective action; but it is by no means self-evident that this "sum-total" or "minimum" pertains to the collectivity irrespective of the distribution of the "utility" or "disutility" among the individuals that constitute the collective whole. Such a principle is not wholly dissimilar from that which determines monopoly prices, the sum-total of a few utilities of large amounts offsetting a large number of utilities of individually small amounts. True, it is admitted that "in the long run" there is probably the greatest amount of individual happiness when there is the greatest sum-total of happiness; and so in the long run it is of no practical moment which point of view is considered to be the correct one. Nevertheless, from the point of view of "pure theory" it is by no means clear that the largest sum-total of utility is the true aim of political action. Not only does such a view savor of a collective entity, but it assumes as a basis of action a principle that is quantitatively as indeterminable as anything that is to be found in the sacrifice theory of Mill, Sax, or Meyer. A sum-total of utilities has no meaning apart from individual utilities; and to us a principle that looks merely to the sum of happiness and not to its extent, that permits the large total of the utilities of a few to be set off against the large total of the disutilities of many, is not the ideal of social justice. It is not sufficient that the largest sum-total *may be* consonant with the largest extent of individual happiness.

It may *not* be so. For neither logically nor practically is what is true of the whole necessarily true of the units. The ideal, then, would seem to be the minimum of sacrifice to the greatest number, which in the long run may produce the minimum of total sacrifice. No other supposition is consistent with the ideals of democratic institutions, or in harmony with the conditions of social content.

That the principle of *equi-marginal*, or *minimum*, sacrifice does not, as we have seen, afford any definite rule for taxation is not perhaps of any importance in itself. But it seems a little strange that one who is *par excellence* a mathematical economist should find satisfaction in a theory based upon a principle that does not permit of an exact mathematical expression, since "the reasoning from the principle of minimum sacrifice assumes no exact relation between utility and means."¹ Nor is it without significance that he is compelled practically to abandon the subjective principle and to find the determinants of rules of taxation in objective standards—in the economic effects of the tax upon individuals and in the economic conditions of the taxpayers. But in this respect the position of Edgeworth is similar to that of Mill, Meyer and Sax. And finally, it is not without interest that in recognizing that there is no exact ratio between utility and means, Edgeworth has given the weight of his authority against the futile attempts of the Dutch economists to reduce taxation to an exact science.

IV. CONCLUSION: ABILITY VERSUS SACRIFICE

The preceding discussion on the basis of taxation has throughout implied the fact that the tax obligation rests upon persons, not upon property; that, therefore, the basis of taxation has specific reference to some fundamental principle that attaches to the person, not to his property. Hence,

¹ *Economic Journal*, vol. vii, p. 567.

therefore, the basis of the tax involves two fundamental ideas: the idea, or principle, that expresses the character of the tax obligation of the individual; and, secondly, the principle of the universal application of the basis, or the relative obligation of taxpayers. It is the first idea that has been the chief subject of our attention in the present chapter; the second will be the subject of the following chapter.

The first of these principles—the basis of the idea that expresses the character of the tax obligation—we have found to be comprehended and expressed in two different ways—from the view-point of the ideas contained in the term “ability,” and from the view-point of the ideas contained in the term “sacrifice.” That there is significance in both of these conceptions of the tax basis is not to be denied; but at the same time we have seen reasons for holding that the idea connoted in the term “ability” more fully expresses the ethical basis for the imposition of taxes, since it is the relation that most fully comprehends, not only the true relation of the individual to the state, but also the ethical relations of the individuals in the state; is most expressive, that is, of the fact that the obligation rests upon *persons*. Ability, as we saw, is expressive of the idea of positive, active participation in the expenses of the state, corresponding to the positive, active participation in the ends of the state. It is expressive, too, of the voluntary character, or aspect, of tax contributions; of the idea of duty, not of compulsion.

On the other hand, we have seen that sacrifice is a negative concept; that it expresses a denial, a sacrifice of personal satisfactions, though, it is true, for higher satisfactions that are common with self and others. It also contains more the idea of compulsion—the compulsory aspect of taxation. Undoubtedly there is truth in this view of the tax, for every tax necessarily involves a sacrifice—a com-

pulsory sacrifice—of personal satisfactions for the sake of the realization of collective satisfactions. And it is true, too, that this idea of sacrifice is of a distinctly ethical character; of a character, too, that is complementary of the ethical idea contained in "ability."

But while all of this is true, the idea of sacrifice does not so clearly and fully represent the nature of the ethical basis—itself based upon the nature of the state—as does the idea of ability; for while it is true that from the view-point of individual wants a sacrifice is involved, from the larger view-point of the complete whole of the individual there is no sacrifice in taxation, but only effort towards the fulfilment of the conditions of the more perfect realization of self.

But, again, equality of sacrifice is a refinement of justice that it is inconceivable the state should ever realize; for equality of sacrifice—relatively equal loss of enjoyments, = equivalent painful sensations—are conditioned not only by property conditions, but by individual character, habits, sensibilities, ideals, etc. Equivalence of sacrifice—of feelings, of sensations—is an ideal conceivable only from the view-point of individuals as a whole, in their ethical relations to each other. For ourselves, we cannot conceive it as an ideal which it is any part of the duty of the state to fulfil.¹ The ends of justice are satisfied when the objective economic conditions, or the objective effects, are made relatively the same by the tax. Or, again, when the tax is adjusted to the ability to support the state relatively to the ability to meet the demands of the wants of the self.

Accepting, then, ability as the best expression of the ethical basis of taxation, though at the same time recognizing the truth contained in the idea of equality of sacrifice, we have next to inquire what principles flow from this basis.

¹ "In framing an ideal," says Aristotle, "we may assume what we wish, but we should avoid impossibilities." *Politics*, ii, pp. 6, 7.

That is, since the primary element in the determination of ability (as, indeed, also, of sacrifice) is property, or more strictly, income, we have to inquire into the nature of the qualifications and limitations of the taxation of income that are demanded, in order to meet the requirements of taxation according to ability; or, again, what principles should control the taxation of income so that the tax may meet the demands of justice. It is not simply or chiefly the ability of income to pay taxes relative to its ability to satisfy personal wants, but it is a question of the relative ability of different incomes under different conditions and circumstances; hence, of the principles that should determine the taxation of income under these different conditions and circumstances. Most important among the conditions determining the ability of income, that is, the ability of its possessor, is the character, source, and size of income; and, therefore, whether the income should be taxed at different rates according to these circumstances in order to meet the just requirements of taxation according to ability. Finally, whether under any circumstances consideration should be given to the needs of the individual as against the demands of the state. That is, whether there are circumstances in which exemptions may be allowed without infringing upon the principles of ability and universality.

CHAPTER VII

ETHICAL PRINCIPLES OF TAXATION

By the ethical principles of taxation I have in mind those principles that are deducible from the ethical basis of taxation; the principles in accordance with which the tax burden must be distributed to meet the highest requirements of justice. It is the problem of determining the principles that will give realization to the ideal of taxation based upon ability. These principles should not be based upon mere sentiments, or upon mere abstractions. To have consistency and value they must be developments, not only of the implications contained in the idea of "ability to pay," but must be developments, also, of the theory of the state, on which is based the whole theory of justice in taxation. Or these principles, again, should be developments of the meaning of "ability," whether they take the form of positive principles, or of exceptions to general rules. Exceptions to general rules there may be, but not exceptions to the fundamental idea—taxation according to ability. The exceptions, as well as the rules, or principles, must be logically contained in this idea. This distinction is important, but is almost universally overlooked, thereby leading to inconsistent conclusions, as we shall have occasion to see.

The development of these principles, which involves the development of the principles of a just distribution of the tax burden, is one of the most difficult problems within the whole field of taxation, and one upon which there is, perhaps, the most diverse opinion. But notwithstanding these differences of opinion, there is common agreement among all

schools of economic thought that justice demands that the tax should be distributed equally and universally. These two principles—Equality and Universality—, which are recognized as logical deductions of both the ethical and the economic basis of taxation, are regarded even more as the two cardinal principles of justice in taxation—of taxation based upon ability to pay. For, since the ends for which the state exists are common to all, justice requires that every member of the state, indeed every person that participates in its ends, should contribute to its support to the extent of his ability, relatively, of course, to the ability of others. The same conclusion is reached if the obligation to pay taxes is considered from the viewpoint of the ethical relations of the membership in the state, of the character of the members as *persons*. For this ethical view of the question demands above all “equality” of taxation, but equality implies universality.

These conclusions are not new. But what we wish to call attention to here is that the principles of Equality and Universality as ethical principles, being viewed from a different standpoint from what they are as political or economic principles, lead to different, and, indeed, to more definite conclusions. Politically, for example, the meaning of “equality” is vague, while the principle of universality stands unqualified. Ethically we find that both principles are conditioned by “ability,” and that, therefore, they may need qualification and limitation. In other words, the ethical contents of these principles supplement and complete their political and economic contents. Indeed, we might say that they are political and economic principles only because of the ethical implications involved in the political and economic bases of taxation. At any rate, it is in the development of the content of these principles that we develop the content of the ethical basis of taxation—taxation according to ability.

I. THE PRINCIPLE OF EQUALITY

That equality in taxation means a relative equality few will deny.¹ It means that there should be the same relative economic conditions after as before the tax. Viewed with respect to ability to pay it means that there should be the same relative economic ability after as before the tax for the satisfaction of personal wants. Subjectively considered—as equality of sacrifice—it means that there should be the same relative intensity of feeling of wants unsatisfied because of the tax; or, if you will, of the wants last attaining satisfaction. Or, again, since income is the primary factor in the determination of (objective) ability, equality in taxation means that the tax should take such portions of income as will leave the same relative amounts for the satisfaction of private needs, their objective importance, or their subjective intensity being considered; or it means that income should be so distributed between the satisfaction of collective and private needs—between public and private expenditure—that there shall be the same proportional satisfaction, the same proportional expenditure, for each when viewed with reference to their relative importance, or their relative intensities.

The problem of realizing equality in taxation, therefore, is a problem of the just distribution of taxes, or of the just distribution of income between collective and private wants. The question, then, resolves itself into this, What proportions of different incomes must be taken so that the tax may be proportioned to ability, and thereby a relative equality be established? In other words, in distributing the tax so as to

¹ Von Hock, as we have seen, makes exception of the tax for the protection of the person, which he thinks should be absolutely equal. The tendency of communism, too, is to make the burden of the government absolutely equal. And even such an individualist as the late Thomas Davidson once questioned, in conversation with the writer, whether all taxes should not be absolutely equal.

realize a relative equality according to ability, Should there be the same rate, the same proportional tax, for all incomes? Or, Does the "equality" necessitate different rates according to the size, character, and amount of income? For if these affect the ability they must likewise affect the rate.

1. *Rate and Source of Income.* It is the belief of many writers on taxation that the ability to pay taxes is very largely affected by the source of income, and that, therefore, there should be differential rates according as the income is "funded" or "unfunded," is derived from inheritance, from monopoly, from "quasi-rents," or from speculation. In practice, however, but little consideration has been given to the source of income.¹ Let us examine briefly the grounds for such distinctions, that we may see to what extent ability is affected by the source of income, and thereby differential rates are justified.

(1) *Funded and Unfunded Incomes.* According to Mill, funded income, or income from property, has a greater taxing ability than unfunded, or personal income, because of its greater permanence.² Wagner assigns two reasons—because funded income leaves the entire labor power wholly, or for the most part, free for other acquisitions; and because personal income has more necessary expenses to meet, such as provisions against sickness, old age, etc.³ With Meyer the only basis of distinction is, that "property is not only and not always a source of income, but it may be immediately applied for the satisfaction of needs" ⁴ in emergency cases.

As to the argument of Mill, it contains only a partial truth. For, as far as life incomes are concerned, the economic necessities of the business world and the growing

¹ The Italian income tax is a partial exception. Cf. L. Say, *op. cit.*, ii, p. 152.

² Mill, *Polit. Econ.*, v. 2, § 4.

³ *Op. cit.*, ii, p. 56. Cf. also Neumann, *Die Progressivsteuer*, p. 178.

⁴ *Op. cit.*, p. 326.

Civil Service provisions of governments tend to a permanency of salaried positions that makes unfunded incomes not a whit less permanent than funded incomes. In fact, many personal incomes are more permanent than property incomes; and besides, there are degrees of permanence in both.¹ So far, then, as the difference is due to a difference in the permanence of income it is a question pertaining to the character, not to the source, of income.

The second argument of Wagner is but a fuller statement of the argument of Mill, for it is the assumed temporary character of personal income that necessitates a larger outlay to provide against future needs.² So far as this argument relates to perpetual family income it contains, indeed, much force of reason; for of two equal incomes there is undoubtedly greater tax ability in the perpetual, than in a life, and still more than in a temporary, income. But this, again, is a question of the character, not of the source of income.

As to the first argument of Wagner, the primary contention is true, but the conclusion unwarranted. If, for example, A and B have each a personal income of \$1000, and A has in addition a funded income of \$1000, it is no reason in itself why A should pay a higher rate on his funded income. He simply has twice the income that B has, and if his ability is more than proportionately increased thereby, it is due to the size of his income relatively to his needs, as compared with the size of the income of B relatively to his needs. In determining A's ability it is of no importance that he is free to earn a personal income in addition to his property income, unless, indeed, we accept Walker's theory of potential ability. So far as this particular argu-

¹ Cf. Meyer, *ibid.*, p. 327.

² To Sax this is the only ground for a differential tax on funded incomes. Cf. *Grundlegung*, p. 514.

ment is concerned—*i. e.*, leaving aside other characteristics of funded incomes—the question is simply one of the size of A's income as compared with B's, and consequently of his relative ability. This question will be considered presently.

The position of Meyer is equally untenable, and, besides, if it is not inconsistent with the declaration of the preceding page, that as there is practically no difference in the permanency of funded and unfunded incomes there is in this respect no difference in ability, it represents, at least, a confusion of ideas. For the real comparison is between different sources of income, whereas with Meyer it is virtually between income and property. Or, more strictly, his comparison is between those who have property but no income, and those who have neither property nor income. Be this as it may, it is quite true that as between the possessor of a funded and the possessor of an unfunded income, the former can continue satisfying his needs, presumably also his collective needs, after income ceases, while the latter can not. But this advantage is in the possession of property, not in a particular kind of income; since the incomes being assumed to have equal permanence represent, as incomes, equal ability. But if the mere possession of property gives greater ability to pay taxes, it must exist whether or not the property is yielding an income, and must exist so long as there is private property; and at the same time differ in degree among different property holders according to the amount of property possessed. But this "ability" could be reached only by a real tax on property, and by such differential rates that it is difficult to see where they would stop short of confiscating all private property, or equalizing its possession—as compared, of course, with the non-income receiver.

Upon the whole, then, we must agree with Sax, that the only reason that a funded income gives a greater ability than an unfunded income is, because it does not necessitate the

same saving to provide against future needs.¹ The possession of property may, indeed, have this same advantage, but only in a very limited way, since in most cases it would soon be exhausted. It is not a taxable advantage. Property itself gives a tax ability not because it may be used to satisfy future wants, but because it has the power of yielding a future income to satisfy future wants. This advantage, however, is limited in scope, and has special application only to perpetual incomes, for reasons previously given.

(2) *Inheritance and Gifts.* That inheritance of property (including bequests) and gifts tend to increase the tax ability of the recipient no one can safely deny. At the same time it must be admitted also, that there are many cases where an inheritance, or a bequest, carries with it a decrease of ability, if we consider the family as the taxable unit; for with the inheritance or bequest there is a loss of the salary of the head of the family.² But so far as there is a real addition to the tax ability of the recipient it is not to be measured by the amount of the inheritance as in itself an additional income, for I cannot regard an inheritance as a true income. It may be a source of new income to the inheritor, but it is not itself income. The ability, therefore, is increased only to the extent of the income-producing power of the property inherited. This ability is not confined to the year of the inheritance, but lasts as long as the income from it lasts. In fine, the increased ability resulting from an inheritance is confined solely to the effects of the inheritance upon the income of the inheritor, either with respect to its annual increase in size or to its funded, or perpetual, character.

The same holds true of gifts, particularly of productive property. In the case of money gifts for defraying living

¹ Cf. also Cohn, *op. cit.*, p. 359.

² Cf. West, *The Inheritance Tax*, p. 118.

expenses, whether occasional or continuous, the gift is justly a part of the annual income. This is true, also, of inheritances or bequests in the form of annuities, or life incomes. If B receives from A \$100,000, his ability is increased just to the extent that A's decreases—to the extent of the income-producing power of the \$100,000, no more, no less. The ability that centered in the personality of A now centers in the personality of B.

That the increased ability comes gratuitously is not a matter that can have any weight, so long as the present property relations are sanctioned by the law of the land.¹ All that justice requires is that the government should ascertain the existing tax ability of every taxpayer. To tax the inheritance or gift, other than as specified, is to put a tax upon capital, though not, it is true, upon the national capital.² The tax should be on the income, not on the property, if it is to be a tax on ability. That an inheritance tax may be justified for other reasons, as compensatory for evaded taxes, payment for special services, etc.,³ we would not deny, but we cannot agree with Meyer that a tax on inheritance is justified on the ground of greater tax ability,⁴ for this ability is amply reached, to the ends of justice, by taxing the income from the inheritance, the income being the only ground of the increased ability.

(3) *Monopoly and Quasi-rent Income.* At first thought it might appear that a differential tax rate would be justified on monopoly incomes on the ground that such incomes have a special tax ability, relatively to other incomes, since they result from special advantages in income-earning power.

¹ Cf. Wagner, *per contra*, ii, p. 588.

² As clearly demonstrated by Mill. *Cj. Polit. Econ.*, v, 2, 7.

³ For a good summary of arguments for special tax on gifts and inheritances see Max West, *op. cit.*, ch. v.

⁴ Meyer, *op. cit.*, p. 359.

On account of these advantages, whatever their source, the tendency is to give the holder of the monopoly an additional income above the average of non-monopoly incomes, and so to increase his ability to the extent of the monopoly increment of his income. All this may be true. But this does not give A, with a monopoly income, a greater ability than B has with an equal but non-monopoly income, their conditions being otherwise the same. Both A and B, with respect to C with his smaller income, have the same relative advantage, the same relative increase of ability. It is simply a question of the size of the income. On the mere ground of ability, therefore, the tax rate on A's income should be the same as that on B's income. The fact that it is a monopoly income does not in itself give it greater tax paying ability.

However, a special tax on monopoly incomes may be justified on other grounds. All monopolies, whether natural or capitalistic,¹ are at bottom legal or social creations, and society has, therefore, a peculiar claim upon the increased ability resulting from the monopoly increment of income. Particularly is this the case where the monopoly utilizes public property, such as streets, or is in any sense a legal creation (which includes capitalistic monopolies).² It is only justice that incomes due to special privileges of government should compensate the government for them. That society should absorb the full monopoly increment of income cannot be granted, for it receives back indirectly many advantages from the monopoly, as, for example, from the private ownership of land, or, in the case of capitalistic monopolies, from the concentration of productive wealth

¹ Such we understand to be those huge corporations where the concentration of enormous wealth under one management makes possible a control over prices. Examples: The Standard Oil Company, the United States Steel Corporation, though both are partly, also, natural monopolies.

² Which, by their incorporation, become, in a sense, legal monopolies.

under the management of the most efficient and competent *entrepreneurs*.

The case is very similar where the income is due to social conditions more than to personal effort, as is the case with "unearned increments." Of this class "ground rent" is the best example. Here the "unearned increment"—rent—is peculiarly a social product, and society has, therefore, a peculiar claim upon it. We are not prepared, however, to concede that society should claim the whole of the unearned income—the "ground rent;" both because society indirectly receives many advantages from this private "monopoly," and because it would tend, in many cases, to discourage the most efficient use of the land. But, in any case, society cannot justly absorb the "unearned increment" of the past, or its capitalized value; for in most cases the rent, to the present holders, is not an "unearned increment," but interest on capital invested. Still, it must be admitted that society has a special claim to this class of income, not only because largely a social product, but because society, as Henry George rightly claims,¹ has a just claim upon the soil. But a differential tax is not justified on the ground of a peculiar ability, other than that which comes from the size of the income.

Much the same conclusions follow with respect to "*quasi-rent*"—to *quasi-monopoly* income. To the extent that income is increased by means of these "rents" there is an increase in tax ability, but the ability to pay taxes is not increased by the mere fact that any part of the income has its source in a "*quasi-rent*." But on the other hand, there is not the same ground for a differential rate, or a special tax, upon the income of "*quasi-rents*" as there is upon pure monopoly income, both because it results more from per-

¹ Cf. *Progress and Poverty*, B. vii, ch. i.

sonal efficiency than from social causes,¹ and because such a tax would have a more immediate and more direct effect upon production and consumption. As Professor Ross holds, a tax on the "consumer's rent" would tend to lessen consumption and thereby work injuriously. But the contention of Professor Ross that the "producer's rent" is a specially good subject for taxation, since such a tax would curtail production least,² can be accepted only with qualification. It may be true with respect to monopoly rent, but a special tax upon the "producer's rent," as "profits"³ of the *entrepreneur*, would be in effect a penalty upon individual capacity and efficiency in production, and would tend to curtail production.

(4) *Income from Speculation.* We need not stop to dwell on the income from speculation. It does not differ from other income in its ability-giving power. It involves large risks and may result in large returns, and it is the size of these returns that determines the tax ability, so far as this is effected by income. But there are different kinds of speculation, and the question whether there should be a differential tax upon speculative profits must be decided in each case according to circumstances. In some cases, as in illegitimate speculation, a special tax may be demanded for police purposes, but in no case does speculative income carry with it any special tax ability. On the contrary, such income tends to give less ability on account of the possibility of its loss in the immediate future.

Upon the whole, then, we find no reason for holding that the ability of any person to pay taxes is affected by the source of his income. The mistake of those who hold to the contrary is due, we think, to their attaching ability to the

¹ The "quasi-rent" of capital would be a partial exception.

² Ross, "A New Canon of Taxation," in *Polit. Sci. Quart.*, vol. vii.

³ See Walker, *Political Economy*, bk. iv, ch. 4.

object of the tax—the income—rather than to its subject—the person. As Vocke says, “The tax on the basis of real ability knows no object, but only a subject and a measure. The subject is constantly changing, let the source of the income be where it will.”¹ In other words, income determines ability only so far as it relates to the satisfaction of wants—future as well as present. This satisfaction is not influenced by the source of income, but only by its character and size, or by source only as character and size of income are reflected in the source.

2. *Rate and Character of Income.* By the character of income is understood, whether it is permanent and secure, or temporary and precarious. Do, now, these characteristics of income produce differences in tax paying ability that justify differential rates? Not, it may be answered, the characteristics *per se*. From the viewpoint of income alone it is of no consequence to ability whether the income be permanent or temporary. If permanent it pays taxes permanently, if temporary it pays taxes temporarily.² These characteristics assume importance only because of their influence upon the satisfaction of future wants. Mill, for example, held that permanent incomes should be taxed more highly than temporary incomes, and temporary more highly than precarious, for the reason that temporary, and still more precarious, incomes have to make larger outlays to provide against future wants—sickness, old age, etc.³ This is a very commonly accepted doctrine, and is, as we have seen, the only ground for the assumption that funded incomes give a greater ability than unfunded incomes.⁴

This position we believe to be theoretically sound, for since the taxpayer is a *person* it is necessary and just that his future needs be taken into consideration in relation to

¹ *Op. cit.*, p. 465.

² *Cf.* Vocke, *ibid.*

³ Mill, *Political Economy*, v. 2, § 4.

⁴ See also Vocke, p. 466.

the probabilities of this future means for their satisfaction. Practically, however, allowance for future demands on present incomes leads to grave difficulties. To begin with, the theory assumes that every person who receives a temporary or precarious income saves a part of his income and invests it in insurance, or otherwise, to provide for future wants. Or, if actual saving does not take place, it is presumed that it ought to take place. But admitting that a part of the income is saved to provide for future wants, it follows that there is proportionately less income to satisfy present wants, and therefore less tax ability. This is too self-evident to need illustration. If, then, such 'savings' are justified it follows, on the ground of tax ability alone, that they should be exempted from taxation; or, what amounts to the same thing, that temporary incomes, from which savings are made for the future, should be favored by differential rates. But it is believed, that not only is such saving justified from the viewpoint of the individual, but that it is sound political policy to encourage it, lest the receivers of temporary incomes (still more of precarious incomes) may become future public charges.

But upon what basis of savings should such differential rates be established? To base them upon actual savings would admittedly be a most difficult problem in practice. Accordingly, Mill thinks that "the next best thing in point of justice" is "to take into account in assessing the tax, what the different classes *ought* to save."¹ This we believe to be a very questionable solution of the difficulty. It opens up at once most perplexing problems. Unless what is exempted is actually saved there results the injustice of what is virtually regressive taxation, equal incomes being taxed at different rates. But above all, it raises the query, How much "ought" one to save from a temporary and a

¹ *Political Economy*, v, 2, § 4.

precarious income for future needs? It must, of course, bear some relation to the amount of the income and to the accepted standard of life. But whatever the amount presumed to be saved, no government could consistently, or justly, exempt from taxation what "ought" to be saved unless the saving was enforced by compulsory insurance, or in some other manner. To exempt any portion of a temporary income, on the assumption that it is saved to provide for future needs, would be grossly unjust if the exempted income is squandered on present pleasures. No! To accept what ought to be saved as the standard makes it obligatory upon the government to see that the actual corresponds to the ideal.

Nevertheless, admitting the justice and right of "savings" from temporary incomes, we believe that the theory of economic ability requires that there should be differential rates in favor of those incomes from which savings are actually effected. But we cannot agree with Mill, that the basis of such rates should be what one "ought to save." Not that we fear any bugbear of "paternal socialism," nor because we think the government would thereby overstep the limits of its functions (for these we have seen to be relative¹); but because consideration of the actual savings is not only all that is required by theoretical justice, but because, in spite of the practical difficulties, rates based upon actual savings, we believe, would approximate most nearly to the ideals of justice. Nor is it any argument against differential rates on temporary incomes that they pay taxes only temporarily, while permanent incomes pay taxes permanently.* The argument rests upon the old fallacy that a tax is upon the income, or property, not upon the person, and that mere income is the measure of ability—a fallacy that is at the

¹ See *ante*, pp. 26, 27 and 52.

* See, for example, Perry, *op. cit.*, p. 519.

root of many false solutions of tax problems. Once comprehend that only the individual, the person, can be the subject of a tax and the way is cleared to a more easy solution of many tax problems.

But differential rates, or exemptions, on account of the savings from temporary incomes for future needs, involves or implies an important consequence: That it is the right of the individual to provide for his future, and therefore, also, of necessity, his present, necessary needs before he is under obligation to contribute to the support of the state. Though a debatable question I believe the conclusion to be sound, but we may best discuss this phase of the question when we come to tax exemptions.

3. *Rate and Amount of Income.* Of far greater importance than the source or the character of income, in the determination of the ability of the taxpayer, is the amount of the individual income received. Normally income is both the means by which we satisfy our economic wants and the source of our tax contributions. The ability to pay taxes is, therefore, conditioned by the ability to satisfy our personal wants, but this latter ability in turn is necessarily conditioned by the amount of income at our disposal. Clearly, then, the amount of taxes that one can pay is conditioned by the amount of his income, other conditions remaining equal. This no one will deny. But we have found that justice requires that taxes should be based upon relative ability, that the burden should be equal; or that such portion of each income should be taken for taxes as will leave the same relative ability to satisfy wants after as before the tax. Hence the first principle of justice in the distribution of the tax is that taxes should be imposed in proportion to the ability to pay. But ability, we have said, is relative to the amount of income. The question before us, therefore, comes to this: In what ratio must incomes be taxed, with respect

to their size, in order that the tax may be proportional to ability—that a relative equality in taxation may be established?

The answer to this question is by no means a simple one. Indeed, to determine what portions of incomes of different sizes must be taken as a tax, in order to effect a true proportion according to ability, is perhaps the most difficult problem within the whole field of tax distribution. It is certainly a crucial problem, and its answer supplies the basic principle of just taxation—the just rate of taxation on income. This has no reference to an income tax. By income we mean the total income of the individual, whatever may be its source. There may without any injustice be different rates on different species of income, or property, either for administrative purposes or otherwise. The question, however, is: What should be the average rate for the total income if taxation is to be according to ability? In other words, In what measure does ability vary with the size of the income? The idea of absolute equality in taxation being excluded, except in communistic or socialistic societies, we have left the possibilities that ability varies regressively, proportionally, progressively, or degressively with income. But regressive taxation—an increasing rate with a decreasing income—is not less absurd than the idea of absolute equality, and, in fact, is contended for by no one; though particular forms of regressive taxes are found in all countries, and are not necessarily inconsistent with justice. Degressive taxation—proportional on all income above a fixed limit, progressive backwards from the same limit—is, in effect, a mild form of progression, being a decreasing progression on the total income until the rate becomes practically, though never theoretically, proportional. It rests, however, upon somewhat different grounds from the progressive tax and arises from exemptions, and may, therefore, better be considered in connection with universality in taxation.

We have left, therefore, proportional and progressive taxation, and the problem is to determine which of these plans most fully realizes equality in taxation—taxation proportional to ability. It will not be necessary, for our purpose, to go into an extended discussion of every phase of proportional and progressive taxation, but we may say in general, that conclusions respecting either system depends upon our theory of the state, our conception of the ethical basis of taxation, and not less upon consistent and logical deductions.¹ In general, those who uphold the protective theory of the state and the benefit theory of taxation advocate proportional taxation, while supporters of what has here been called the ethical theory of the state, and of the ability theory of taxation, tend to the advocacy of progressive taxation.² To the former class belong the English, the French and the earlier German economists; to the latter, the later German economists and those who have come under their influence.

(1) *Proportional Taxation.* Proportional taxation is, I think, the logical tendency of the protective theory of the state and of the benefit theory of taxation, for these theories put a property value upon the protection and assume that the benefit of the protection is proportional to the property, or revenue, "enjoyed under the protection of the state." At the same time the conclusion is little more than tautological. If, however, we assume as would seem to be quite as true, that the benefit of the protection has a proportionately greater value for the poor than for the rich, relatively to their incomes, regressive taxation would be the logical

¹ For a careful review of the relation of tax rates to the basis of taxation, see Seligman, *Progressive Taxation*.

² Exceptions are, in the main, due to a confusion, or to an unconscious identification of the ability and benefit theories, or to considering the tax from the viewpoint of income instead of the person.

consequence.¹ If, on the other hand, we regard the benefits of government as measured by the subjective sacrifice occasioned by the loss of satisfactions on account of the tax, progressive taxation would seem to be the logical result, since the intensity of the unsatisfied wants would decrease as incomes increase. If cost of service, instead of value of service were considered as the basis of the tax, I am inclined to believe that regressive taxation would be logically demanded.² But the fact is that the benefit theory affords no fixed basis for determining the rate of taxation. The advantages of government are qualitative, and therefore, as Professor Seligman says, "quantitatively immeasurable."³

But we have already discarded the benefit theory of taxation, and have, therefore, to consider proportional rates only in their bearing upon the relative "ability" of taxpayers. The question, therefore, is, Is ability proportional to income? But few economists of note answer the question in the affirmative.⁴ With those who do, either the benefit theory is lurking in the background, or else ability and income (or property) are assumed to be equivalents⁵—income, not the person, being regarded as the subject of the tax. Marzano, for example, writes: "I firmly maintain that the proportional tax is consonant with justice, for the simple reason that the contributive faculty, of which income is the concrete and actual expression, does not increase otherwise than in proportion" (*i. e.*, to income).⁶ This, indeed, is

¹ Cf. Roscher, *op. cit.*, p. 191; Mill, *Polit. Econ.*, v, 2, § 2; Parieu, *Traité des Impôts*, i, p. 87; Menier, *op. cit.*, p. 215.

² Cf. Madam Royer, *op. cit.*, pp. 36-7. *Per contra*, Sismondi, *op. cit.*, p. 155.

³ *Progressive Taxation*, p. 85.

⁴ Cf. Seligman. *ibid.*, pp. 150-3.

⁵ See, for example, Parieu, *Traité des Impôts*, vol. i, p. 134, for both defects. The same errors, I think, are also found in Léon Say and Leroy-Beaulieu.

⁶ Marzano, *Compendia di Scienza delle Finanze*, p. 122. So, likewise Baer: "Il criterio per giudicare della parità delle condizioni, o di loro rapporto in più o meno, non può essere altro che quello dell'importanza delle sostanze, dell'avere, di beni che si posseggono." *Op. cit.*, p. 19.

really the only logical argument for a proportional tax, from the view-point of ability. But it is either a *petitio principii*, or it is tautological. Income and ability are made interchangeable. No consideration is given to the personality of the taxpayer, to the relation between income and wants.

This criticism is seemingly forestalled by Marzano in the further argument, that, since the demand of advancing civilization increases wants in the same proportion that income increases, the tax should be proportional.¹ By implication the satisfaction of wants measures ability, but the wants are assumed to increase proportionately with income, and so, also, is ability. The argument is specious, but not sound. It is far truer, I believe, that with advancing civilization wants increase at a more rapid rate than income or wealth increases. Wants increase directly with education and culture, with moral and spiritual growth, but while it is true that the development of these is very largely conditioned by the growth of wealth (and so of income), it is not true that their development is necessarily directly proportional to the growth of wealth. Rather do they develop progressively. Hence, wants thus viewed in their relation to income would seem to demand regressive rather than proportional taxation.

But if by "wants" Marzano means "efficient wants" his argument is not less ineffective. It is true, in that case, that the power of satisfying our personal wants increases proportionately with income, but ability is not merely a question of the relation of income to the satisfaction of personal wants. Ability to pay taxes has reference to the relative ability to satisfy personal and collective wants, as compared with the like ability of others. Because, then, if there were no taxes our ability to satisfy our increasing personal wants would be proportional to our increasing income, it does not

¹ Cf. Marzano, pp. 124-5.

follow that our ability to pay taxes maintains the same proportion. For, while wants increase with advancing civilization, and "efficient wants" with increasing income, collective wants—the demand for efficient government—increase in even greater proportion, become of their relatively greater importance. Hence, from this point of view the tendency would be towards a progressive, rather than a proportional tax. However, the question of ability is not a question of increasing wants with growth in civilization, and consequent increase of incomes, but whether, under existing conditions, ability increases proportionately with income. This can be maintained only by the first argument of Marzano, the invalidity of which we have pointed out above. Besides, though our individual wants increase with the increase of our individual incomes, or our wealth, our collective wants increase in an even greater ratio. Or, apart from the question of the value of life, which may be assumed to be the same for all, our wants, deprived of satisfaction on account of the tax, become of relatively less importance as our wealth increases, as compared with the wants of government. Hence, from this view-point the relative ability of large and small incomes is evident. We shall, however, consider this phase of the question more fully in connection with progressive taxation,

The weakness of the argument for proportional taxation, as a logical deduction of the theory of ability, is brought out very clearly in the fact that the most influential, and to their advocates the most decisive, arguments result from inconsequential reasoning, or specters of the imagination. For the most part these arguments take the form of objections to a progressive tax; on the ground that it is, "inquisitorial," is "robbery," is "socialistic," is "inhuman," is "sentimental," is "arbitrary," etc., etc. With such an abandonment of reason argument is impossible.

There is, however, one argument that perhaps deserves

more consideration. It is not the result of fright at a "specter," but is nevertheless a clear type of the inconsequences of reasoning by a complete shifting of premises. I refer to the leave-them-as-you-find-them argument for proportional taxation—*noli me tangere*. This is one of the most common, and has been, perhaps, the most telling, argument for proportional taxation, but it has nothing whatever to do with the theory of ability. If the argument has any application at all it is, as Neumann says, in the give-and-take theory of taxation,¹ and only in the persistence of the benefit theory does it find any place in the theory of ability. The argument, too, presumes that property, not income, is the source of the tax, and is closely allied with the economic doctrine of *laissez-faire*. Moreover, the primary premise is itself false. *Noli me tangere* is no more a function of government in taxation than it is to level all fortunes. A tax necessarily affects the distribution of wealth through its influence upon the savings from income, and the cessation of taxes (assuming that government would still exist) would favorably affect, upon the whole, the accumulations of the rich more than of the poor. A government, then, has done its duty when it distributes the tax according to the ability to bear it, although it incidentally and indirectly affects the distribution of wealth even though this end is not directly aimed at.² Still, a government may not overlook the economic effects of a tax, for when these become ruinous it is evidence that the tax is not based upon ability to bear it, and is therefore unjust.³ But proportional taxes may affect the distribution of wealth in the same manner as progressive taxes, though by no means in the same degree.

Passing over these irrelevant arguments for proportional taxation, the question whether a tax proportional to income

¹ Neumann, *Die Progressivsteuer*, p. 101.

² Cf. Neumann, *ibid.*

³ See chapter iii.

is a tax proportional to ability may be considered from two points of view—objectively and subjectively. Objectively, it is a question of the relative importance of public and private needs satisfied by increasing incomes; subjectively, it is a question of the relative sacrifice endured by the possessors of large and small incomes through the payment of the tax. In the former case, relative ability is determined by the relative importance, objectively considered, of the needs unsatisfied because of the tax; in the latter case, relative ability is determined by the subjective intensity of the same marginal, unsatisfied wants. As the question leads at once to progressive taxation, it will be considered in that connection. The disproof of proportional taxation based on ability is the proof of progression.

(2) *Progressive Taxation.* That the principle of taxation according to ability leads logically and inevitably to a progressive rate is recognized by most economists who accept ability, or its assumed equivalent—equality of sacrifice—as the just basis* of taxation. Some, however, like Mill and Vocke, accept the principle of progression only in its modified form of degression—a proportional rate on the “clear” income.¹ Others, like Seligman, Pescatore and Walker, while accepting the principle of progression theoretically, as the only logical outcome of the ability basis of taxation, question whether it can be justly applied in practice on account of the practical difficulties in the way of its execution.²

Upon what, then, does this consensus of opinion rest? In brief, upon the conviction that ability to pay taxes increases faster than income increases. But what is the ground of this conviction, if it is anything more than a mere sentiment, or an

¹ Mill, *Polit. Econ.*, v, 2, 3; Vocke, *op. cit.*, pp. 472-9.

² Seligman, *Progressive Taxation*, p. 199; Pescatore, *La Logica delle Imposte*, pp. 23-5; Walker, *Political Economy*, p. 500.

ipse dixit? It rests upon both objective and subjective considerations. Let us note the latter first.

Subjectively, then, a tax is assumed to be proportioned to ability when it effects an equality—"equivalence"—of sacrifice; when the holder of a small income feels the sacrifice occasioned by his tax just as much, but no more, than the holder of a large income feels the sacrifice occasioned by his tax. But, so it is maintained, such an "equality of sacrifice" is not obtained by the giving up of proportional parts of incomes of different sizes. For, in satisfying our wants the most intensive wants are always the first to be satisfied, and with increasing incomes wants will be satisfied of ever decreasing intensity; so that the marginal utility of the want satisfied with the last increment of a large income has a less intensity than the marginal utility of the want satisfied with the last increment of a small income. Or, what amounts to the same thing, the wants sacrificed on account of the tax are always the least intensive wants, but the marginal wants sacrificed on account of the tax increase in intensity as incomes decrease in size—the obverse of the fact that with increasing incomes wants of decreasing intensity are satisfied. Hence, the taking of proportional parts of unequal incomes necessarily does not effect a proportional sacrifice. Therefore, a progressive rate is essential to realize a true proportion, the rate gradually increasing as incomes increase.

As put by Meyer the argument is, that "the proportional tax (*Der gleiche Steuerbetrag*) occasions a so much larger sacrifice the smaller the income from which it is borne, because the smaller the income the more intensive are the needs which are deprived of the means of satisfaction, and the average intensity of the needs attaining satisfaction is put off to an ever greater distance."¹ Hence to equalize

¹ Meyer, *op. cit.*, p. 331. Meyer advances another argument for progressive taxation that is closely allied with his argument for differential rates on funded

the intensities there must be a progressive rate. So, likewise, it is held by Wagner: "That it is statistically probable that ability increases faster than income, because with increasing income there is an ever larger quota of free income left over, which is not held for the satisfaction of subsistence needs, therefore for needs satisfied with much greater difficulty,"¹ larger portions of small incomes and smaller portions of large incomes being used to provide for the necessities—food; clothing, shelter. Hence the necessity of a progressive rate. So, too, Neumann reaches the same conclusion from a slightly different point of view. In the first place ability is identified with sacrifice, since, like sacrifice, it increases either as one imposes labor upon himself or as he denies himself enjoyments and satisfactions—"the sacrifice of toil and of renunciation."² Such sacrifices are imposed by taxes. Nevertheless, ability to pay taxes is not proportioned to income, as there are other sacrifices that must be taken into consideration—expenses for food, clothing, culture, care and support of the family, etc., etc. These latter sacrifices increase progressively as incomes decrease. Hence, a progressive rate with increasing incomes is necessary in order that the tax may "occasion equal efforts and sacrifices over against other needs."³

In spite of the weight of authority in its behalf and the dictum of Neumann, "that it is only through a consideration of the sacrifice imposed that the measure of ability first contains definite form and becomes useful for a tax system,"⁴

incomes. It is, that with larger incomes there is greater power of accumulation of property; that, therefore, they should be taxed more highly, the property adding to the ability as in the case of funded property. The argument contains the same fallacy as that for a differential rate on funded incomes. (*Anle*, pp. 213-216.) Or, if it be presumed that the accumulation of a large property increases the income, the argument is not to the point.

¹ Wagner, *op. cit.*, p. 457.

² *Die Progressive Einkommensteuer*, p. 62.

³ *Ibid.*, p. 63.

⁴ *Ibid.*, p. 62.

the sacrifice theory of progression is not to us, we confess, altogether convincing. Indeed, the argument appears to be a *non sequitur*. Because we satisfy our wants in the order of their decreasing intensity, or with large incomes satisfy less intensive wants than with small incomes, and in the case of a tax sacrifice the least intensive of our wants, it does not follow that proportional parts of incomes of different sizes will not effect equivalent sacrifices; that, for example, a 3 per cent. tax on A's income of \$10,000 is not felt by him exactly the same as a 3 per cent. tax on B's income of \$1,000 is felt by him. If the income of A were suddenly reduced from \$10,000 to \$1,000 and the income of B raised from \$1,000 to \$10,000, then A would feel a 3 per cent. tax on \$1,000 proportionately more, and B a 3 per cent. tax on \$10,000 proportionately less than they felt the 3 per cent. tax on their former incomes. But this does not follow when the state of mind of A is compared with that of B, for what is to A a necessity is to B a luxury. Really, comparison between them is impossible.

Above all is our contention true if, with Mill and Vocke, we exempt the necessities—the minimum of subsistence—and apply the rate only to the clear income; an exemption, as we shall show later, is the logical consequence of the ability theory. Moreover, necessities are in a class by themselves. Comparison between them and other wants is on a par with a comparison between the indefinite and the definite, or in their extremes, between the infinite and the infinitesimal.¹ Apart, then, from the question, whether the ideal aim of taxation is the production of equivalent intensities of feeling on account of the tax (a somewhat questionable ideal), there can be no subjective proof of the realization of this equivalence. Subjectively, we cannot tell whether it would be attained by a proportional, a progres-

¹ Cf. Sax, *Die Progressivsteuer*, p. 85.

sive, or a degressive rate. We are dealing with the "quantitatively immeasurable."

In spite of this difficulty both Wagner and Neumann, while accepting ability as the true basis of taxation, find their proof for progression only by interpreting ability in terms of subjective sacrifice. On the other hand, Meyer, who makes sacrifice the basis of the tax, determines the rate (which he finds should be progressive) by interpreting the sacrifice in terms of objective economic conditions—of objective ability. So, likewise, Sax declares that no definite results can be attained by the sacrifice theory, as all we can say of feelings is that one is greater or less than another, but not how much greater or less.¹ But Sax does not himself escape the difficulty as easily as he imagines. He prides himself, as we have seen, upon escaping the dilemmas of the sacrifice theory (and also of the ability theory) by his theory of marginal utility, applicable alike to collective and to private wants. From the fact that as incomes increase there is both a decreasing utility—a decreasing intensiveness—in the wants satisfied, and at the same time an increasing utility, with respect to their extensiveness, it is concluded that finally the extensiveness of the utilities becomes so great that their decreasing intensiveness is practically in inverse proportion to the increase of income; and that, but for their extensiveness it would be more than an inverse proportion.² But in changing from the conception of sacrifice to that of marginal utilities, Sax has not changed the principle in the least. He is still dealing with subjective states of feeling. These marginal utilities are precisely what the sacrifice consists of. To effect an "equivalence" of these utilities—these subjective feelings—is not a whit different from effecting an "equivalence" of sacrifice.

Hence, in the determination of the question of rates, the

¹ Cf. Sax, *Die Progressivsteuer*, p. 83.

² Sax, *ibid.*, p. 86.

theory of Sax has to meet with practically the same difficulties that are to be met with in the sacrifice theory, and he solves the problem exactly as Meyer solved it—by an appeal to objective standards, to the general agreement among men, and to the observation of the effects of feelings in economic exchange.¹ True, the objective conditions are supposed to be the expression of the subjective feelings, or subjective feelings to be induced by objective conditions; so that in determining the tax rate the government has but to observe the effect upon feelings of objective conditions and relations, and then so arrange the rate that these relations will produce the desired subjective effect—equivalence of feelings = equivalence of sacrifice.

But with all of the "observation" of the effect of feelings upon economic exchange, no government can tell whether a tax proportional to income will produce equivalent feelings; not only for the reason already given, to wit: that the fact that with increasing incomes the marginal utilities satisfied are of constantly decreasing intensity—of constantly decreasing utility—is no proof that the loss of a portion of these utilities to A, with a large income, would not be the same to him as the loss of the same proportion would be to B, with a small income; but also from the fact, as well pointed out by Sax, that we must take account of the extensiveness as well as the intensiveness of the marginal utilities sacrificed. Even if a "more or less" could be determined, the theory affords no way of determining how much more or less, or the rate of the progression; for I cannot agree that collective wants are determined in exactly the same way as are the private wants.²

It has remained for the Dutch economists, firmly adhering to the sacrifice theory, and to progression as its logical con-

¹ Sax, *Die Progressivsteuer*, p. 85.

² Cf. Neumann, *Die Steuern und das öffentliche Interesse*, pp. 190-200.

sequence, to reduce the rate of progression to a fixed rule—to a mathematical formula—but their scientific exactness is purely an affair of the imagination. As we have seen, they attempt to solve the problem by the ingenious but deceptive device of taking two series of numbers and assuming that they correspond respectively to the decreasing utility of increasing increments of income, and the decreasing utility of increasing increments of the tax, such as would result from proportional taxation. This, it is assumed, would show an unequal, or a disproportionate, sacrifice. All that there is to do then is to so change the series as to produce a rate that will equalize the marginal utilities of the tax on different incomes, or equalize the sacrifice occasioned by the tax. But as there is absolutely no reason for choosing one series rather than another, any result, any rate of taxation, is theoretically possible according to this theory. This Cohen-Steuart admits, but his own attempted refinement of the theory by assuming that the truth lies in the mean between two extremes, is, as both Professors Sax and Seligman have shown,¹ equally groundless, equally imaginary. It is all guess work, all groundless hypothesis. Hence the rule for progression: "Arithmetical increase of the rate with geometrical increase of the income up to a definite point when progression is replaced by proportion,"² is purely chimerical, and therefore wholly without value.

Upon the whole, then, the sacrifice principle does not appear to throw much light upon the theory of rates. Inevitably appeal must be made to *objective* standards, to objective economic conditions and relations. Even if "equivalence of feeling" is the ideal of justice in taxation, it is a purely abstract ideal. A government has fulfilled its obliga-

¹ Sax, *Die Progressivsteuer*, p. 59 *et seq.*; Seligman, *Progressive Taxation*, pp. 184-5.

² Quoted from Seligman, *Ibid.*, p. 188.

tions in the just distribution of the tax burden when it has proportioned the tax according to the ability of the taxpayer, as this ability is determined by objective facts, objective economic conditions of the taxpayers. We may grant that such a tax may, and in a very general way will, produce an equivalence of subjective feelings. But the fact remains that the point of view of the government is that of relative objective ability; that is, ability as determined by the economic means for the satisfaction of public and private needs, their relative importance being taken into consideration. Such a conception of ability and our obligation to pay taxes is founded upon the nature of the state. It is, as we have seen, of a distinctively ethical connotation. This granted, What rate of taxation follows as a logical consequence? That is, A and B having incomes of different sizes, what portions of their incomes ought each to contribute to the support of the state, on which their social and civilized existence depends? If A has ten times the income of B, ought he to contribute ten times as much? Is his ability ten times as great? To me the question is essentially, at least fundamentally, ethical. But it is a question of practical ethics. It involves, nay it cannot escape, consideration of the relative economic conditions of A and B; nor, again, the effect of a tax upon their relative economic conditions. Immediately the problem has an objective reference; ultimately, a subjective reference. That is to say, immediately it is a question of the true relation between economic means and objective economic conditions; while ultimately it is a question of the relative importance, or character, of the wants satisfied by the economic means, or the relative importance of the needs of which the economic conditions are the expression. Immediately and objectively it has to do with economic conditions; ultimately and subjectively with the importance of these relations in their bearing upon the pur-

poses of life. A government, however, must find its rules for guidance in the objective conditions, in accordance with a standard that represents the consensus of opinion as moulded by the moral sense of mankind; by the habit, customs, and ideals as reflected in social institutions; by the degree of culture and civilization attained and by the economic status of the society in question.

Now by common consent wants are divided, in a very general way, into necessities, comforts and luxuries, and by common observation we learn that there is a certain correspondence between the satisfaction of each of these grades of wants and the amount of disposable income; or, that with different amounts of income we provide ourselves with different classes of economic goods, and thereby with the correspondingly different grades of enjoyment, of which the economic goods afford the means. By common consent, too, the necessities are deemed of the most, the luxuries of the least relative importance, not alone from the viewpoint of the subjective value to the individual, but also from the viewpoint of the progress and development of mankind. The comforts stand between the two. Therefore, the extension of the scope of the necessities is of more importance than the extension of the comforts, while the extension of the latter is of more importance than the extension of the luxuries, and this importance could be shown to extend both to our economic and our spiritual well-being. Hence, considered from the viewpoint of the realization of the ends of man, in which is found the ultimate end of the state, it is of more importance that those who are confined to the necessities of life extend the scope of their satisfactions, than that those who enjoy the luxuries should extend theirs.

At the same time it must be admitted that the comforts and luxuries are as positive factors in human development as are the necessities. Indeed, in a sense they are much

more significant. Necessities, when confined to absolute necessities, are a pre-condition to any development. Development begins only when the stage of necessities is passed, when the stage of comforts, or of "culture" begins. And progress is marked by the gradual merging of comforts into culture necessities, and the conversion into luxuries of what has been regarded as superfluous. But the order of their importance remains unchanged. From the ethical standpoint, both of man and of the state, it would seem, then, to be a logical deduction, that the deprivation of a portion of the luxuries would be of relatively less importance than the deprivation of a similar portion of comforts, and, still more, than that of necessities. Or, what amounts to the same thing, it is of more importance that there should be the means of satisfying the latter than either of the former.

Briefly, then, we are forced to the conclusion that ethically considered, that is, from the viewpoint of the ethical conception of man and of the state, wants of relatively decreasing importance are satisfied with increasing incomes, so that the taking away of a part of a small income (as by a tax) necessitates the giving up of wants of relatively greater importance than would the taking away of equivalent parts of large incomes. In other words, considered with respect to the importance of wants there is proportionately more disposable for taxes in large, than in small, incomes—proportionately greater ability. But there is no difference in the importance of the state to the person, as such. The difference of interest is indistinguishable. Yet regarded from the point of view of the totality of satisfactions, and, therefore, of the means of these satisfactions, the importance of the state to the individual would seem to increase with the increase of income; and because of the indispensableness of the state to this increase of income, its importance might well be regarded as increasing in greater proportion than

the increase of income. Hence, also, the obligation for a more than proportionate share of the tax burden as measured by income. But this view merges into the benefit theory; it does not directly determine ability, or the obligation resting upon it. Confining ourselves, then, to the view of the equal importance of the state, the above argument leads inevitably to the conclusion that ability increases in a greater ratio than income, thus necessitating a higher rate on large than on small incomes in order that the tax may be proportional to ability. In brief, a progressive rate on increasing incomes is essential to a proportional tax on ability, if by ability is understood the relative satisfaction of wants with respect to their importance.

This view of progression is not, I think, altogether different from that of Schäffle, who conceives of ability as determined by the amount which one can contribute in taxes without crippling the same relative support of himself; and who concludes that this principle leads to progression, on the ground that as incomes increase in size relatively larger portions may be contributed to the state without detriment to a relative satisfaction of personal wants. But Schäffle also thinks that the idea of progression is itself "instinctively correct," "it being only the manner of carrying it out that is false in the theory of progressive taxation."¹ This is specially true if we give emphasis to the difference in the importance of wants, which appears to be implied in the theory of Schäffle. It is questionable if based on the sacrifice theory. But progression is "instinctively correct" only because it is based upon ideas that conform to the common judgment of mankind, with respect to the relativity of wants and their comparative importance to individual and social well-being.

That there is an indefiniteness in this theory of progres-

¹ Schäffle, *Mensch und Gut*, p. 49. Cf. also, *Die Grundsätze*, p. 23.

sion, and that it affords no definite ratio, or rate, of progression, is not to be denied.¹ But this is inevitable in any theory of progression, and it does not prove that the principle itself is not correct. It has, at least, the merit of conforming to the sound principle of Vocke (though differently applied by him), that the principle of progression must proceed from its own fundamental thought,² which we take to be the principle of relative ability as determined by income and by the relative importance of wants.

But though vague and indefinite, must it be admitted that this theory of progression affords absolutely no principle for determining the rate and the limit of the progression? We think not. Vocke solves this question easily by assuming that the "fundamental thought" is the primary right to the needs of subsistence, and therefore the right to the exemption of the minimum of subsistence, by which both the rate and its limit is fixed by the amount of the exemption, the only indefiniteness being in the amount of the exemption. That is, the limit of progression is degression.³ The difficulty with this view, as it appears to me, is this: What Vocke considers to be the "fundamental thought" of progression—that is, of the principle of equality—is in reality, the fundamental thought of exemption—that is, of the principle of universality. The degressive principle is, indeed, incidental to exemption, but it has no direct bearing upon the question of progression, except upon the questionable assumption that ability is proportional to "clear" income.

Schäffle, without reference to any "fundamental thought" of progression, but upon mere grounds of policy, would have the rate and limit of the progression indirectly deter-

¹ See Seligman, *Progressive Taxation*, for criticism of Schäffle.

² See Vocke, *op. cit.*, p. 477.

³ Vocke, *ibid.*, pp. 477-9.

mined by the taxpayers themselves, through a tax upon consumption.¹ But this would be very uncertain in its effects on account of the shifting and incidence of taxes. Still, we may admit that the tendency of such a system would be to impose the tax "according to one's dynamic ability;" also to tax the "economic personality," and at the same time put a limit upon the progression.² So likewise, Held would also indirectly attain the same result by imposing taxes so that they will occasion the least complaint, this complaint being considered as the best index, or measure, of sacrifice, or ability.³ This view has much in common with the theory of Sax, already sufficiently discussed, that the "equivalence" of the burden, and therefore, also, the just tax rate, is determined by the people through their representatives in the government.

But while these views contain much truth, I believe that we can find in the principle of progression rules that determine and limit its rate. Theoretically, if the principle of progression is based upon comparative ability, as we have understood it, there must be the same relative means of satisfying wants, according to their importance, after as before the tax. This is a mere truism. But it follows, also, that there should be the same relative ability to exercise one's faculties, to the end of larger satisfactions, as existed prior to the tax. Otherwise progressive human development will be checked, and the purpose for which the state exists be negated. Nor is this mere abstract theory. The same objective signs, by which the principle of progression is objectively determined, will aid, also, in determining the rate and limit of the progression—the effects of a tax upon the relative economic means of satisfaction. Above all is

¹ Schäffle, *Mensch und Gut*, pp. 168-9.

² *Ibid.*, p. 168.

³ *Einkommensteuer*, p. 115.

the limit reached when the rate is such as to prevent that 'saving' that provides for future production."¹

That this whole view of progression—of equality in taxation—is vague and arbitrary, must again be admitted. But so is every other theory of progression. Here everything depends upon the determination of the relative importance of needs, which is a purely relative conception. But it must be borne in mind that our viewpoint is ethical—the ethical ideal in taxation. Nevertheless, this conception of progression is not altogether impracticable. It is capable of practical application within certain limits, and, therefore, of realizing an approximation to justice, which is all that any theory of progression can claim. And the higher the moral standard of mankind the more nearly will the approximation attain to the ideal.

But in spite of the justice of the principle of progression, there are practical objections of another character that deserve, perhaps, some consideration. That progressive taxation would prevent the growth of capital, or cause it to emigrate, is true only if the rate of progression be excessive. It would not follow moderation, or a wise conservatism, in the application of the principle. This is attested by the results of its practical application in Switzerland, Saxony, or wherever else applied. The same is true of the objection that, logically carried out, a progressive tax would confiscate wealth and equalize fortunes. Besides, logically carried out progressive taxation does not lead to confiscation. Progression may lead to infinity, but progressive taxation is limited in its application by the principle by which it is itself determined, as we have already seen. Hence, Wagner's social-political theory of progressive taxation is in direct conflict with his theory of taxation according to ability. Again, that

¹ The theory that a progressive tax necessarily prevents "saving" is based upon the erroneous assumption that what is paid as a tax would otherwise be "saved."

progressive taxation would stimulate money lenders to encourage the increase of public debts is no truer than in the case of proportional taxation.¹ Nor would it necessarily imply undue interference with personal rights and liberties. This results more from the kind than from the rate of taxation.

Upon the whole, then, I believe that if progression is just in principle it should be applied in practice; but moderately applied. Even a conservative attempt to realize a principle of justice that is felt to be "instinctively correct" would go far towards mitigating the social discontent of the masses, and would tend to their rise by peaceful, instead of by revolutionary, methods. Or, as Held says: progressive taxation "is a social need and a means of peaceful progress."² "A social need," I take it, in the sense that I have understood the principle of progression, as largely conditioned by the relative importance of the intellectual and social development of the poorer classes, upon which in great measure depends the progressive development of mankind; "peaceful progress," since every recognition of justice towards the masses, on the part of the government, tends to kill the revolutionary impulse.

"If that organization of society and political life which we call aristocratic in the best sense of the term," says Cohn, "is to survive (and it is indispensable for the progress of civilization that it should survive), the corresponding aristocratic attitude of the upper classes must come up to the demand made upon it. They will, among other things, have to fulfil this requirement also in the way of accepting an adequately developed system of taxation. Their degree of readiness will make up in quality for what the democratic masses would otherwise demand, some day, in quantity. The voluntary acceptance of an increasing burden will serve

¹ Cf. Adams, *Public Debts*, pp. 39-41.

² Held, *op. cit.*, p. 172.

to strengthen their traditional influence and is indispensable to the best civilization, as well as to the existence of the higher classes themselves. On the other hand, the more an increasing progression comes as the result of the importunate demands of a discontented populace, the more reckless will it be, both in the new demands which it embodies and in its changes of the old order of things."¹ In brief, if the practice of progression by those upon whom it would apply creates a possible danger, it averts the possibility of a far greater danger.

II. THE PRINCIPLE OF UNIVERSALITY

That the principle of "universality," like the principle of "equality," follows from the nature of the state, the nature of the individual, and from the relation of the individual to the state, we have already seen. Thus viewed there would seem to be no ground for any exception to the rule. Universality would seem to be an unconditional principle of taxation. This, in fact, is the view of most writers on the theory of taxation. It is the common idea that because of the indispensableness of the state to the individual, the universality of interest in the state, there is no exception, in principle, to the obligation to contribute to the state's support. If exception is allowed, it can be only upon the ground of absolute necessity—the non-existence of means above the necessary minimum of subsistence. For to tax this "minimum" would necessitate an equal return from the taxes, which would occasion a net loss to the government, because of the increased cost of the collection and dispensation of this part of its revenue without any net return to itself.

But this view of exemption from taxation appears to me to be entirely wrong. It overlooks important factors in the

¹ Cohn, *op. cit.*, pp. 324-5.

problem. It is consistent only with the protective theory of the state and the benefit principle of taxation.¹ For since every individual receives protection, and thereby derives a benefit, every individual, without exception, should contribute to the cost of that protection. In the case of property there could be no tax for protection if there was no property to protect.² But for the protection of the person there could be no exception, other than that of absolute necessity. For every "benefit" there must be a corresponding tax. If we consider the benefit to consist in the gains from "exchange" there could be no tax where such "gains" did not exist, but there are certain benefits that are immaterial gains, common to every member of the state, and for these gains every citizen should contribute a tax in exchange.³

Again, we may regard the benefit as consisting in the service performed by the state in production. In this case, if we look at results only, there could be no tax if the "service" was not utilized—if there was no production. But, on the other hand, if, more properly, we regard the state as the condition precedent to all production, in which every one is privileged to participate, there would seem to be no ground for exemption.⁴ At any rate, Stein considers it to be just to tax labor on the ground that it is only by the administration of the state that its acquisitions are made possible.⁵ In reality, however, the problem of exemption is not consistent with Stein's theory of "diffusion," since, according to this theory, the burden of the tax is, in the main, justly distributed through the influence of price.⁶ Or, again, if the benefit consists in the possession of a portion of the "national capital," and the tax is distributed in proportion to the amount of this capital held, then there can be no

¹ Cf. Murhard, *op. cit.*, p. 90.

² Cf. Perry, *op. cit.*, p. 515-8.

³ *Ibid.*, ii, p. 251.

⁴ Cf. Sismondi, *op. cit.*, p. 164.

⁵ Cf. Stein, *op. cit.*, p. 496.

⁶ *Ibid.*, i, p. 494.

exemption except where there is no possession of the national capital. "The minimum of needs is spared by force of necessity, not by virtue of a false principle."¹

Much the same conclusion results when exemption is considered from the viewpoint of "equality of sacrifice;" for if "equality of sacrifice" is the true principle of taxation any exemption must appear as a contradiction of the principle, and is to be justified only on grounds of absolute necessity.² For where there is no tax there can be no sacrifice, and hence no "equality" in taxation. Exemption is an exception to the principle, not a logical consequence of it.³ Nevertheless, Sax attempts to deduce exemption as a consequence of the principle of subjective sacrifice, and his explanation is, perhaps, the best that has been given from this standpoint. The thought is, as with Mill,⁴ that the physical necessities are incomparable in their intensity with all other classes of needs, comparison being possible only between those needs that are satisfied after the physical minimum is passed, the comparison including all collective needs. But no needs above the physical minimum (which includes the collective needs) can be satisfied until the needs below the minimum are fully satisfied. Hence, sharing in the expense for the satisfaction of collective needs can take place only where the means exceed the requirements of the minimum of subsistence.⁵ The exemption is a matter of necessity, not of principle. "On grounds of absolute necessity the pure minimum must be exempted, but justice does not demand any exemption so long as there is an income equal to the minimum plus the tax."⁶

But exemption on the ground of necessity is confined to the bare physical necessities of life. If exemption is to be

¹ Menier, *op. cit.*, p. 221.

² See, for example, Wagner, *op. cit.*

³ Cf. Meyer, *op. cit.*, p. 294.

⁴ Mill, *Political Economy*, v, 2, 3.

⁵ See Sax, *Grundlegung*, pp. 509-13.

⁶ Sax, *Die Progressivsteuer*, p. 69.

justified on income that exceeds the requirements of these bare necessities, it must be justified upon some fundamental principle, be the logical outcome of the "fundamental thought" that lies at the basis of the ethical idea of taxation. Such I believe to be in accordance with the real facts of the case. We have, then, two problems before us—the justification of exemptions and the limitations of exemption.

1. *The Justification of Exemptions.* Accepting the ability basis of taxation, exemption of the minimum of subsistence follows as a necessary consequence. For if taxation according to ability is the true principle of taxation, it is a mere truism to say that where there is no ability there can be no obligation. It is not merely that there can be no tax if there is no ability, but where the ability does not exist the tax obligation does not exist. The obligation begins the moment that the ability is manifest. To tax where there is no ability would be a violation of the principle that taxes should be proportioned to ability. Exemption, where there is no ability, is but the fulfilment of the implications of the principle which is assumed to be the just basis for the distribution of the tax burden. It is not, as in the preceding theories, a *necessary* exception in contradiction with the principle that is assumed as the basis of taxation.

It is true that the exemption of any person from the payment of taxes is in contradiction with the principle of universality. But this principle is a relative, not an absolute, principle of taxation. Or, if politically and economically it is absolute, ethically the principle of universality extends only so far as there is ability. Within this limit only is it a universal principle. Hence, while exemption is an exception to the general principle of universality, it is in harmony with the qualified form of the principle—the form in which it is a true principle of taxation. True, exemption of the minimum of subsistence is a necessity, but this is not its only justification. It follows, as we have seen, from principle.

But the real justification of exemption rests upon a basis that is more fundamental than the idea of taxation according to ability. It rests, indeed, upon the same "fundamental thought" as does the idea of ability itself. Both are developments of the same fundamental idea—human personality in its relation to the state. It involves both the relations of the individuals to the state and their relations to each other, and not simply, as Meyer holds, their relation to the state; nor, as Wagner seems to hold, simply their relations to each other.¹ Particularly is this true if the exemption is to extend beyond the bare necessities for physical existence.

What, then, is the fundamental ground of exemption, or of exceptions to the principle of universality in taxation? The more common idea is that since every individual participates in the ends for which a state exists, every individual, without exception, should contribute to its support. But this we have found to be conditioned by the further principle, that the support should be proportioned to ability; by implication there being no obligation where there is no economic ability. But we have now to inquire why this obligation does not exist when the importance of the state to every individual is admitted. Those, for example, who hold that the obligation never ceases base their conviction upon the idea that the state, if not of first importance, is, at least, of equal importance with physical subsistence, to every member of civilized society. This is the view of both Held and Cohn. Held, for example, in declaring against the exemption of the wages of labor, says: "The state is for all a need; its existence for the whole is more necessary than the life of the individual."² So likewise Cohn: "Plainly, as viewed from the standpoint of the latest theory of the state, there is no room for the doctrine which admits the state and its demands only as second to the necessities of life. The

¹ See Meyer, *op. cit.*, pp. 293-4.

² Held, *op. cit.*, p. 105.

state, above all things, is part of these necessities and its demands are therefore part and parcel of the demands of subsistence."¹ Hence, theoretically, or in principle, there is, according to this view, no justification for exemption.

But the view of Held and Cohn appears to me to be a mistaken one. It is based upon, or at least it implies, the erroneous conception of the state as a "social organism," the individual being a means, the state the end. But according to the view that the state exists for the highest development of human personality—the individual being the end, the state a means—"the latest theory of the state," the effect of the tax upon the person becomes of first importance. If the state is a necessity to this development, it is quite as true that there must first be the existence of the person. Moreover, the right to provide the means of subsistence is a fundamental right, and is prior to every other right. Even Held admits this. He goes even farther, and, in spite of his theoretical objection to exemptions, would exempt not only what is necessary for the physical needs of self and family, but also what is necessary for their spiritual life.² Vocke, too, recognizes the right to the necessary needs of subsistence as prior to any claims of the state, but he limits this right to the bare minimum of subsistence.³ It must be admitted, however, that with Held the exemption which he

¹ Cohn, *op. cit.*, p. 331. Cf. also, p. 354.

² "Den Jeder hat vor Allem das Recht zu leben, und es ist wohl die schreiendste Ungerechtigkeit von dem zum nothdürftigen Unterhalte erforderlichen Einkommen noch öffentliche Abgaben für den Staat zu fordern." Held, *op. cit.*, p. 451. "So wahr aber der Mensch ein Vernunftwesen ist, muss einem Jedem nicht bloss als verlassen werden, was ihm zum sinnlichen, sondern auch Das, was ihm zum geistlichen Leben unentbehrlich ist." *Ibid.*, p. 452.

³ "Der Staat nur solche Ansprüche als seinen eigenen vorgehend anerkennen darf und kann, welche älter und naturgemäss noch berechtigter sind als er selbst, nämlich das Recht auf die Selbsterhaltung und auf die Erhaltung der Familie, bzw. in diesen auf die Erhaltung des Menschengeschlechts. Ein älteres, unbedingteres Recht gibt es nicht." Vocke, *op. cit.*, p. 480. See also pp. 463-4.

would allow is not a right, but only a social need that is necessary to the highest efficiency of labor.¹

That exemption of the minimum of subsistence is a necessity, as is so universally emphasized, goes without saying; but the above considerations show, I think, that the exemption is also justified in principle, and is not, as Von Hock claims, "a simple act of benevolence."² I do not see how any other conclusion is possible when we reflect that the ultimate end of the state is the developed personality of the individual. For the first condition of this development is an economic personality, an economic freedom, which involves above all the necessary means of subsistence. And, therefore, to tax the "minimum" is to nullify or retard the very development which it is the purpose of the state to promote. This is even more patent if the tax necessitates a public charity.

The economic and social importance of an "economic personality" was clearly recognized by Held, who deemed it a sufficient ground for the exemption, not only of a bare minimum, but of a sufficient minimum to enable the poor to rise to a higher economic order.³ Stein goes even farther and justifies exemption because of its bearing upon the total personality of the individual. True, Stein regards the state as an "organism" whose personality is to be realized, the tax being a necessary means to this end. But this "organic" view adds nothing to the theory. For the fully realized personality of the state is marked by the realized personality of the individual, or the highest form of personal life—"personal freedom." Indeed, the realization of "personal freedom" is regarded as the ultimate end of the state, and this realization is effected by the realization of its own personality. But the first requisite is "economic freedom."

¹ Held, p. 118.

² Von Hock, *op. cit.*, p. 173.

³ Held, *op. cit.*, p. 118.

Hence, the exemption of the minimum of subsistence.¹ The same conclusion is reached by Schäffle, though from a different point of view. Emphasizing the fact that the tax obligation rests upon personality—upon the person—it is justly held that there can be no obligation where the personality has not realized itself in property, in an economic personality (eine Vermögenspersönlichkeit), since what the state requires is economic goods.² That is, while the tax obligation rests upon personality it is only potential until there is realized an "economic personality."

While there is much truth in these different views of the relation of exemption to personality, the question of real importance is the effect of a tax (upon the minimum) or of an exemption, upon the personality of the taxpayer.³ Where this is endangered there can be no obligation; and it is endangered when it has not so far developed as to have realized itself in objective goods sufficient to meet the needs of subsistence; to have realized itself, that is, in economic freedom, in economic personality. In brief, the obligation begins when "economic" or "personal" freedom begins. The first claim upon property, which we have seen to be the objectified self, and therefore, in a sense, a "natural right," is subsistence of the self, of the physical person; but since the state is a condition of the development of the personality of self, the obligation to use the property to support the state, and the right of the state to demand this support, begins after the needs of physical subsistence are met.

But this right to exemption, on the part of those who have incomes at or below the minimum of subsistence, involves a corresponding obligation, on the part of those who have incomes above the minimum, to meet the full demands of the

¹ Stein, *op. cit.*, section, *Die Steuer*.

² See Schäffle, *Grundsätze*, pp. 14 and 169.

³ Cf. Schäffle, *ibid.*, p. 170.

state for economic goods. Nor does this obligation rest simply upon the nature of their relation to the state as alone possessing economic ability, but it has its basis also in the nature of the ethical relation of man to man, of man as a spiritual being—an end in himself. Indeed, from no other point of view is exemption to be justified in principle, whether considered with respect to the relation of the individual to the state, or with respect to the relation of individuals to each other as persons. Directly and immediately, however, the basis of exemption is the principle that the burden of taxation should be proportioned to ability. Even the social-political argument of Wagner assumes to be based upon this principle. But in making social-political ends the only justification of exemptions,¹ Wagner diverts his argument from the main point at issue. For the real social-political end of exemption, like that of progression, is not to distribute the tax according to ability, but by equalizing property to equalize ability. But the attainment of such a result is not a problem of taxation.

There are, however, various other arguments for the exemption, which do not involve the question of principle, but are of a practical nature. Such, for example, is the argument based upon an assumed analogy between capital and labor and the necessity of maintaining their highest efficiency. As developed by Luigi Rameri it is, that income consumed for subsistence is a species of recuperation of capital, "being spent to maintain the productive force of labor;" that, therefore, such income should be exempt from taxation for the same reason that the taxable income from any industry excludes that part of the product that goes to pay current expenses and to keep up the plant.² Hence, only the clear income is a taxable income. This is the same

¹ See Wagner, *op. cit.*, ii, § 167.

² Luigi Rameri, "Per la Proportionalita delle Imposte," in *Rassegna* for Oct. 1891.

economic argument as that used by Held who justifies exemption on the ground that to tax the "minimum" would lessen the efficiency of labor.¹ While the argument has directly only an economic bearing it is nevertheless of considerable importance, since to curtail labor efficiency is to check economic progress and thereby to lessen the means and with it also the efficiency of the state. It is given an added weight when we reflect that the evil influences would be cumulative in their effects. But indirectly the argument bears also upon the principles previously discussed. For in lessening labor efficiency by a tax upon the "minimum" we check the development of "economic personality," and with it also that social development that leads to the development of the larger personality of man.

Passing over the "compensatory" argument, which is a question of special and not of general exemption, we may note the argument based upon Adam Smith's fourth canon of taxation:² the argument that there should be an exemption of small incomes on the ground that the cost of collection of the tax would be in excess of the receipts. The effect of such a tax would be, not only to work economic injury to those having small incomes, but also to those having large incomes, by unnecessarily and unjustly increasing their tax burden. From this point of view exemptions would be justified even though they were not justified in principle. Nor would the exemption necessarily be limited to the minimum of subsistence, but should extend to the point where the receipts from the tax would just exceed the cost of its collection; just as in the preceding economic argument the exemption should extend to the point where the tax would not cripple the efficiency of labor.

¹ See Held, *op. cit.*, p. 118.

² For this argument see, for example, Mlle. Royer, *op. cit.*, pp. 23-7.

³ Adam Smith, *op. cit.*, p. 416.

But while such arguments as these have their weight, and should be considered in any practical application of the principle of exemption, the real justification of exemption must be found, as we have seen, in the nature of man, the nature of the state, and the relation of man to the state. The importance of the state to the individual cannot be ignored, but at the same time the supreme importance of the individual should be recognized. This is brought out very well by Vocke, who of all writers has most clearly stated the true principle of taxation. His statement is a good summary of the whole argument. "Man," he says, "lives and moves in the state and for the state, but not alone that, for he is an end in himself; if he exists for the state the state exists for him. And if man lives through the state he does not live alone through the state, but also, and indeed in the first instance through himself. Man, generally speaking, is before the state, and if the state takes from him his existence it puts itself in contradiction with its function and its purpose,"¹ for the first duty of the state is not to endanger the existence and the support of man.² And it is claimed with much truth, that if we remember that the subject of the tax is persons, not things, the problem solves itself.³

2. *The Limitation of Exemptions.* The argument has thus far assumed that the exemption should be confined to the "minimum of subsistence." But is this "minimum" limited to the absolute necessities of life, or should it extend to a

¹ "Der Mensch lebt und webt zwar im Staat und für den Staat, aber das alles nicht allein, sondern er ist auch Selbstzweck; er ist nicht nur um des Staats willen, sondern auch der Staat ist um des Menschen willen. Ebenso lebt der Mensch durch den Staat, aber das ebenfalls nicht allein, sondern auch, und zwar in erster Reihe, durch sich selbst. Der Mensch ist überhaupt vor dem Staat, und wenn hiernach der Staat den Menschen in seiner Existenz angreift, so setzt er sich in Widerspruch mit seiner Aufgabe und seiner Bestimmung." *Op. cit.*, p. 459.

² *Ibid.*

³ *Ibid.*, pp. 471-2.

"culture minimum"? In other words, Does the obligation to contribute to the support of the state begin the moment that income exceeds the necessary means of physical subsistence, or is the obligation relative to an arbitrary standard of life?

In the first place the "minimum" must be sufficient, not only for the subsistence of the person but also for the maintenance and support of the family. Without such an extension of the "minimum" the race could not be perpetuated, at least under the conditions that promote the highest civilization, the highest development of individual personality. Moreover, the family is the natural economic unit—the unit of economic personality, of economic freedom. And without the economic freedom of the family the first important step towards realized personality must remain untaken, the first important step towards the fulfilment of the ends of the state unattained. The family as much as the individual precedes the state—conditions the state. Provision for its subsistence is, therefore, not only a right, but is a "natural right," that the state is in duty bound to respect. To quote Vocke, "The state has the same obligation to recognize the necessary care of the family as a duty prior to its own claims, as it has to recognize that of self-maintenance."¹

In the second place, there can be no permanent economic freedom—requisite to permanent economic personality—until the income is sufficient to provide not only the absolute necessities of physical existence, but also to provide for the maintenance of labor power and for times of sickness,* for the family as well as for the self. For a state to levy a tax that would be prejudicial to either of these conditions would be to weaken the source of its own support; and besides, it would be as much a contradiction of its own purpose as to

¹ *Op. cit.*, p. 467.

² *Cf. Vocke, ibid.*, p. 460.

tax the absolute necessities of physical existence, differing only in degree. On the other hand, until the "minimum" is sufficient to meet these requirements there is no real tax ability, and therefore no tax obligation.¹

But when these requirements have been met, when, that is, there is a "clear" income above the minimum of subsistence as above understood, the obligation to aid in the support of the state begins. Or the obligation that was before potential, because of the importance of the state to the individual, now for the first time becomes actual. If exemption is extended beyond this limit it cannot be as a right, but only on grounds of policy—political, social, or economic. It is true that the limit is somewhat arbitrary, for it is difficult to determine exactly how much should be set aside as necessary for the support of the family or to maintain the labor power of the taxpayer. In fact, the limit is a purely relative one, the standard for exemption necessarily depending upon the accepted standard of life, which is itself conditioned by the customs, habits, social ideals and degree of culture attained; and, above all, by the conditions of individual and national wealth. Practically the standard must be determined by the same principles that determine the rate of progression.

Still, it should be remembered that purely on grounds of theoretical justice only provision for normal support, and normal efficiency, should be allowed. For example, allowance cannot, or should not, be made for abnormally large families,² since this would be to put a premium upon thriftlessness and irresponsibility, and thus to encourage an increase of population where most detrimental to society, and to the highest individual development. On the other

¹ "Die Leistungsfähigkeit aber ist das notwendige Korrelat der Leistungspflicht, welche ohne jene nicht denkbar ist." Vocke, p. 284.

² See, *per contra*, Wagner, *op. cit.*, ii, 447.

hand, if more than the normal efficiency of labor is allowed for in the exemption, it must be because of the retroactive effects of the exemption, or because of the disproportionate cost of the collection of the tax. But with advancing wealth, advancing culture, and advancing civilization the standard of exemption should be raised in conformity with the ends for which the state exists—the progressive development of mankind.

CHAPTER VIII

PRACTICAL JUSTICE IN TAXATION

IN the preceding study of the principles of justice in taxation, we have not wholly lost sight of the fact that theoretical ideals are not always, nay are seldom, fully realizable in practice. Nor have we been unmindful of the fact that economic and social conditions must enter largely into our determination of the ideal. For since the ideal in taxation must necessarily have as its objective point the effects, or results, of this or that system or method of taxation, the nature of the effect must be a controlling influence in determining the character, or the justice, of our ideal. But while we have recognized the relative nature of the ideal of justice in taxation it must be admitted that we have not developed this aspect of the question, but have given our attention almost entirely to theoretical principles. And yet, we insist, not to theoretical principles that are purely visionary in the sense that they are applicable only to ideal beings, but principles that are founded upon the ethical nature of man and upon moral and social facts and forces. Nevertheless, the fact that the dominant thought has been that of the morally right—of justice—has led us to ignore for the most part the possibility of the practical realization of our ideal. So true is this, indeed, that there will be a seeming justice for the critic who urges that our theoretical principles afford no solution to the apparently insoluble problem of practical justice in taxation. Moreover, since the theoretical principles are unrealizable in practice, the critic may further

urge that there can be no value in these theoretical discussions.

But before we concede the truth of these criticisms let us consider for a moment whether theoretical principles that cannot be fully realized in practice may not after all have some practical value; indeed, whether the principles themselves are not to some extent, at least, practicable. In the first place, there is always a practical value in determining a norm for the guidance of real life, or for the guidance of action in the actual happenings of life. Human action unguided by an ideal can be but irrational, purposeless, and without significance or achievement. This is as true in matters of taxation as in the purely moral life. Indeed, since human action is necessarily social action, a norm of conduct becomes indispensable, for otherwise there could be only the self-seeking of the individual which would be destructive of social life, and so ultimately also of any truly human life.

But again, Is there nothing practicable in the theoretical principles we have discussed? The answer to the question must depend upon the meaning we give to the "practicable." But the practicable must mean one of two things: Either a system which is so in harmony with prevailing sentiments and convictions that there is a possibility of its immediate adoption; or a system of which there is a reasonable hope of adoption by a change in the prevailing thoughts and ideals. Now we maintain that there is something practical in our principles from both points of view. In fact, there is no principle that we have advocated that cannot be found in actual practice in one country or another, so that the problem is not so much one of a practical application of new principles as an extension, or fuller application, of accepted principles. But though there may be some principles not in harmony with the sentiments of a

particular people, there may yet be some practical value in their discussion; for a nation, like an individual, can progress only as its thought and ideals move ever upward to higher and truer standards.

But there is yet another point of view from which we may consider the practicability of theoretical principles of just taxation—that of their implications. That is to say, if the principles involve consequences that are impossible to be realized in practice it would seem to be a just charge that the principles are themselves impracticable. What, then, are the implications involved in our principles, if these principles are to be fully realized? Undoubtedly the student of finance will say: A single tax on incomes. Nay, more, an income tax with progressive and differential rates together with a broad application of the principle of exemptions. Nor can one deny the justice of this judgment. More than this, however, is true; for there are not a few economists and students of finance who will grant that under ideal conditions of human life and human relations—when a sound social ethics dominates human affairs—such a system of taxes would most nearly realize the ideal of justice. But we are not dealing with such ideal conditions, and taking the facts as we find them—the sentiments, prejudices and convictions of the people—there can be no doubt but that a single progressive tax on incomes is one of the most visionary of all possible forms of taxation, particularly with respect to the people of the United States.

But after all, is such an implication, or such a consequence, involved in our theory? The main burden of our whole thesis has been to show not only that the tax burden should be distributed according to the ability to bear it, but to show the grounds upon which such a principle rests. True, it was found that the ability is determined in part by income and in part by the needs which that income must satisfy, and

that, therefore, a tax in proportion to ability is necessarily based upon income, though it may be with progressive and differential rates. Yet the fact is recognized (if not before, it is now) that the tax could not be assessed directly upon income for the reason that only under ideal conditions could the income be ascertained. Nay, to attempt to do so under existing standards of social ethics would be to defeat the end sought by imposing, in many cases, regressive burdens. We have before insisted that the principles of justice are relative, in the sense that they must be tested by results. In the same way must we determine their implications. Because under ideal conditions the implications involve certain results it by no means follows that under actual conditions the same results must occur. In other words, because under ideal conditions our principles involve a single tax on incomes, it does not follow that they involve such a tax under the social conditions as we actually find them to be. The main thing is to tax ability by taxing income, which is the only ultimate source of ability; but if this income can be reached and ascertained by the indirect method, this method is the one demanded by our principles. Or if the sentiment of the people is against the direct ascertainment of ability the same conclusion follows. In fact, if we could reach the full income by either method it would matter little which one was employed. We must then employ the one that will give us the most accurate results, the one that will most nearly ascertain the true income. Under present conditions this is believed to be that of the indirect method. Indeed, with a proper system it is believed that ability, so far as it is determined by income, can be ascertained with a fair approximation to justice, and such an approximation is all that can be hoped for in human affairs. And yet the ideal—a tax on income—is not without its value, since it serves as the goal for every indirect system of reaching the income ability of the tax-

payer, for every tax, however assessed, is ultimately a tax on income.

Assuming, then, the above conditions, it remains to indicate the character of a practicable tax system that will most nearly realize the principles for which we have contended. Nor can I do more than to "indicate" such a system. I cannot stop either to elaborate or to defend it. It is believed, however, that the system which we shall propose is not only perfectly consistent with our principles, but is one of which there is hope for its gradual adoption; and when adopted will give a realization to justice in taxation such as has never yet been realized in this country, if, indeed, in any country. It is not maintained that all of the principles would be fully realized, as, for example, the principle of progressive taxation, but that we should attain the nearest attainable approximation of those principles, and at the same time go a long way towards removing the gross inequalities in the tax systems of our several States.¹

Our present thesis, then, is to outline a scheme of taxation that will most nearly reach the full income of the taxpayer and most equitably distribute the tax burden—most nearly and most equitably, I mean, under existing conditions. And this method is believed to be that of the indirect one of reaching income through some index, or through indices, of income. Such an index is to be found in property which, as we have seen, may be regarded either as the source or the consequence of income. And by taking different forms of property we may get several indices, which if wisely selected will constitute a fair basis for the determination of income.

But the problem of an equitable system of taxation is something more than this. It is necessary not only to select such indices as shall be fairly representative of in-

¹ For an outline of a rational system of taxation, see Adams, *Public Finance*.

come, but such as may be most easily and most fairly assessed—perhaps the most difficult problem in the whole field of practical taxation. For if property is to be made the basis, or measure, of income, an honest assessment becomes fundamental to an equality of taxation. And, therefore, very much depends both upon the character of the property taxed and the method by which it is taxed. Moreover, much depends also upon the character of the political unit that taxes the different forms of property. Or in other words, the problem is also one of a distribution of the tax system among the different political units in such a way as to realize the best economic and ethical results.

In brief, then, the problem before us is one of the assessment of property, of the methods of taxation, of the kinds of property to be selected for taxation, and the proper spheres of state and local taxation. We cannot stop to discuss the question of rates or of exemptions. Not the question of rates, because it is admitted that only the proportional rate is feasible for the present; not exemption, because the principle is universally adopted in practice, and we do not feel it necessary to add to what has already been said on the subject. And yet we must acknowledge, that the principle of exemption is not carried out in practice to the extent that our principles would demand, not to the extent that we believe to be justified. Still, as previously pointed out, it must be admitted that the limit, or rather the extension of exemption, is relative to the prevailing economic and social conditions of the people and to the economic needs of the state. But assuming the question of exemptions to be on the whole fairly settled, and the question of rates to be for the present outside of the field of practical discussion, let us attempt to portray in some detail, though briefly, the system of taxation indicated above.

I. ASSESSMENTS

That equitable assessment is one of the most difficult problems in practical taxation is admitted on all hands. It is the crucial point in the investigations of all tax commissions and in all practical plans for the reform of our present methods and systems of taxation. And yet if property is to be made the measure of income—the index of ability—equal assessment is indispensable to justice. Indeed, given an honest assessment of property and the battle for justice in taxation is as well as won. Whether such an assessment may be approximated will depend very largely upon the character of the property taxed and the method by which it is assessed. What, then, are the conditions that are essential for the equal assessment of property?

1. *Declaration versus Doomage.*—Much has been written concerning the relative merits of a declaration by the taxpayer, and doomage by the government. Theoretically the principle of declaration is no doubt the correct one. This follows inevitably from the voluntary character which we found in the relation of the citizen to the state. Yet we found at the same time that there is also a compulsory feature in this relation, which is founded upon the necessity of the state's existence. From the character of this compulsion, founded upon a political necessity, it follows that the declaration should be supplemented by the doomage power of the government. This double feature—declaration and doomage—is the prevailing system of our several Commonwealths, though with some the "declaration," with others the "doomage" is made the key-note of the system. But however much the principle of declaration may conform to the highest ideals of taxation, experience shows that it is not a principle that can be relied upon to attain justice until there prevails a higher standard of social ethics.

No system can be just, either in theory or in practice, that

puts a premium upon perjury by ignoring facts of human nature; that induces perjury on the part of some because of the well-known fact of the perjury of others, perchance with the connivance of officials; that induces perjury because honesty would invite upon one's self a penalty in the form of an assumption of a part of the tax burden that rightfully devolves upon those who have escaped by an act of perjury. It is, for example, within our personal knowledge that an aged widow whose sole means of support is the income from nine thousand dollars loaned on mortgages at five per cent. (a small part at six per cent.), pays a tax of three per cent. because she insists upon an honest declaration; thus paying in taxes more than fifty per cent. of her small income! And this is but one of hundreds of similar instances fostered by the perjury systems of taxation in our various Commonwealths. The iniquity and injustice of such a system cannot be too strongly emphasized. These iniquities should be removed by the adoption of some system that will reach the income and distribute the burden according to the income ability of the taxpayer, and not according to the conscience of the individual.

Such a system, however, is not to be found in the way of a premium upon honest declarations in the form of a lower tax rate on certain forms of intangible property, such as mortgages—a method practiced in Pennsylvania and partially approved by the Massachusetts Tax Commission.¹ For such a method of evoking honest declarations is a species of class legislation that purposely relieves a part of the taxpayers from their proper and just share of the tax burden, only to impose it upon those whose visible property prevents their evasion. True, such a method may evoke a

¹ *Tax Commission Report*, 1897, pp. 88-9. Connecticut has adopted a similar device which the Michigan Tax Commission deems "worthy of most serious consideration." *Report*, 1900, pp. 18-9.

larger sum of taxes upon a given form of property—intangible personalty—than would result from the normal rate upon the declaration (with implied oath¹) of the individual. But such a concession, or purchased honesty, is quite as unnecessary as it is unjust. For if such property must be taxed there are simpler and more rational methods of reaching it. What these methods are we shall presently consider. Here we wish simply to emphasize the fact that equal assessment is the foundation of justice in matters of taxation, and that that system is inherently wrong and unjust that seeks honest declaration by a veiled method of bribery.

2. Taxable Property. Before discussing the proper methods of assessments it will be well to consider the kinds of property that should be taxed as most nearly and most adequately representing income, the ascertainment of which is the real aim of the government and the real purpose of the assessment. It follows, therefore, that in the selection of property for taxation two conditions are essential: First, the property selected should be fairly indicative of income, and, secondly, it should be such that its value may be easily ascertained with some degree of truth; for while income is not always proportionate to the value of property, it nevertheless remains true that upon the whole the value is a fair index of income. At any rate the value of property is about the only standard, or measure, of income that we have, so long as it is not feasible to ascertain the amount of income directly. But the justice of such a standard of income depends more than all else upon the equality of the assessment. And this equality, again, depends both upon the kind of property taxed and upon the method by which it is assessed.

As to the kind of property that best measures tax ability, it is the common theory and practice of our several States

¹ The actual taking of an oath is, I believe, rarely required.

that every variety of property is equally indicative, and that, therefore, no form of property should escape assessment. Wagner's devices for reaching every form of property give sanction to this theory. In practice, Ohio has carried the doctrine to very near its extreme limit. The experience, however, in all of our States is a clear demonstration of the utter failure of the attempt to reach ability by any such method. This, indeed, is recognized by most Tax Commissions¹ as one of the most patent evils of our tax systems. The fact is that no form of property can be considered as indicative of income, or ability, of which it is morally certain that only a small fraction can be reached. Hence, for purposes of taxation, only such forms of property should be assessed whose value can be determined with some degree of accuracy; or, better, perhaps, property should be assessed only in such form as lends itself to the determination of its value. This leads us to remark that we believe the principle of multiplicity of taxes to be entirely erroneous, both in theory and in practice. For apart from the impossibility of determining all forms of property, as mentioned above, there are certain types of property that are more accurate measures of income than other types, and tax systems should seek such types if such property can be found and its value can be ascertained. Without stopping to develop this feature, it may be remarked that a "habitation tax," or a tax on house rent, affords an excellent example of what is meant. Such a tax, too, has the advantage that it can be easily ascertained. That, within certain limits, such a tax is a fair measure of income will be generally conceded, since the amount paid for house rent is, in general, proportionate to income. So true is this, that it is recommended by many French writers and by the Italian econo-

¹ As Massachusetts, Ohio, Wisconsin and Michigan. For the opposite view see minority report of Geo. E. McNeill in *Mass. Tax Com.*, 1897.

mist Baer.¹ It is also recommended in the majority report of the Massachusetts Tax Commission.² Still, it must be admitted that house rent as a measure of incomes must be confined to moderate incomes. For the income of the multi-millionaire house rent would be no measure whatever. Such a tax must, therefore, be used with caution. As a single tax, except upon small incomes, such a tax would be most unjust. Indeed, any form of a single tax must work injustice, largely in consequence of the differing effects of shifting and incidence, but partly because of the differing opportunities for evasion.

The multiple tax is also objectionable because of the cost of assessment and collection, thus violating one of the cardinal principles laid down by Adam Smith, and since accepted by all students of taxation. Because, then, of their double injustice—evasions and unnecessary costs—multiple systems of taxation should be avoided. But we have seen that the single tax is also objectionable. Hence a wise system will consist of such a selection of plural taxes as can be based upon forms of property at once indicative of income and of easily ascertainable value. What these forms are will appear a little more in detail as we proceed. But after all, it is, perhaps, not so much the form of the property to be assessed as the method of its assessment that is important.

3. *Methods of Assessment.* The problem of equitable assessment involves two difficult tasks: The discovery of property, and uniformity of valuation. Though a constitutional requirement of most of our states, it is a notorious fact that, with the comparatively few exceptions of "widow's mites," there is not only no pretense at a full valuation, but hardly a pretense at a valuation at a uniform rate. But

¹ Baer, *L'avere e l'Imposta*, p. 32.

² *Report*, 1897, pp. 104-9. In opposition see minority report of McNeill, pp. 153-4.

whatever the "pretense," it is the universal verdict of Tax Commissions, tax officials, and of students of our taxing systems that uniformity of assessments is an unrealized dream, an ideal of the imagination, to say nothing of the total escape of certain forms of property from all taxation. Lack of uniformity of assessment applies to all forms of property, though to some more than to others, depending in part upon the successful intrigue and deception of owners, in part upon the intelligence and honesty of officials; but the complete escape from assessment pertains essentially to intangible property. Let us consider, briefly, each of these problems—the discovery of property and the uniformity of its assessment.

Concerning the discovery of real estate and tangible personal property little or no difficulty arises. The problem, as we have seen, attaches to the discovery of intangible personal property. How, then, is this to be reached? Two methods are possible; Either the compulsory recording of all possessions of intangible property—of mortgages, bonds, stocks, etc.—similarly to the recording of deeds, in order that they may have legal validity; or the taxing of such forms of property by taxing their visible representatives—lands, corporations, etc. With respect to mortgages either method is applicable; only care should be taken to avoid the injustice of double taxation by taxing both the land and the mortgage. If the land is taxed to its full value the mortgage is indirectly taxed and should not, therefore, be taxed directly. But if it is deemed best to tax the land at its full value, less the value of the mortgage, and to tax the mortgage directly, then the mortgage should be recorded that its full value may be ascertained without difficulty, and with only a nominal expense. Other credits could be treated in the same manner, though some forms of personal notes it would seem to be advisable to exempt from taxation and to use other indices of income.

For the taxation of stocks and bonds the only rational and effective method is that which taxes them by taxing the corporation or other property which they represent. Viewed as a tax upon income, as in effect it is, it is the principle of taxing income at its source—a principle extensively practised in the English Income Tax. The extent to which such forms of property escape assessment is too notorious to need specific proof, there being, as a rule, from 80 per cent. to 90 per cent. that wholly escapes taxation.¹ Nor has any effective method yet been adopted, other than the English method, by which the income from such property can be reached for purposes of taxation. The compulsory recording of stocks and bonds would be a decidedly objectionable method, both on account of the expense attending the recording, assessment and collection (the stocks and bonds constantly changing hands), and on account of the practical difficulties of the enforcement of such a method; as where the owner of the stock or bond resides in a State other than that where the corporation is situated, or the stock or bond recorded. On the other hand, it is a simple matter to obtain from corporations the amount of their earnings, of their capital, or of stocks and bonds; and the collection of the tax directly from the corporation has the merit of involving the minimum of expense. It is the absence of a rational system for the taxation of this form of property—the mere pretense of its taxation—that has given to the tax systems of the American States their well-earned opprobrium—begetters of perjury, fraud and injustice. But by the simple expedient of taxing at the source, order and justice may come out of the present chaos and injustice. We shall return to this subject later in another connection.

¹ See, for example, Ely, *Taxation in American Cities*; Seligman, "The Personal Property Tax" (in *Essays*); and the Reports of the Tax Commissions of Massachusetts, Pennsylvania, Ohio, Michigan, Wisconsin and Colorado.

We have said that the assessment of tangible personal property and of real estate affords but little difficulty. This, however, is true only theoretically. Being tangible, it is true, indeed, that it is theoretically, nay, in a sense, practically possible to discover these forms of property; yet it is a notorious fact that both forms are very unequally assessed. Particularly is this true of tangible personal property in the form of household goods, but a small fraction of which is reached by the tax assessor. The chief difficulty of reaching this form of property lies in the fact that every home is felt to be sacred from the intrusions of government officials, a sentiment respected by the officials themselves. The result is that the official assessor must rely upon the taxpayer's declaration, a very unsafe criterion as we have seen. Only injustice can result from such a method. The only feasible solution would seem to be the total exemption of this form of property from taxation. And this suggestion will appear all the more rational when we consider that the purpose of taxing any form of property is to reach the income of which the property is but a symbol. True, household goods constitute such a symbol, or index, but only in a very general way, and then only for moderate incomes. But there are other and more certain indices of income which will serve the purpose far more satisfactorily. To obtain substantial justice it is not necessary to seize upon every possible index of income; but, as we have seen, only such as are at the same time most indicative and most easily applied.

The case is quite different with real estate. This is upon the whole (though there are exceptions) a just index of income, and there are neither sentimental nor technical reasons against its assessment. The problem here is essentially one of the intelligence and honesty of the assessor, his ability to estimate the value of property and to withstand the

temptations of bribery. Nor is this difficulty confined to real estate. Precisely the same difficulties are to be met with in the assessment of corporations, particularly railroad corporations.¹ In the case of real estate, it is the requirement of most of our States that it shall be assessed to the full extent of its value, though it is not uncommon to find it assessed, even within the same city, anywhere from 40 per cent. to 75 per cent. of its value.² Such an inequality of assessment is most unjust in its effects, being equivalent, in extreme cases, to the imposition of a tax upon some greater by 100 per cent. than the tax upon others. And, by the way, we need only to call attention to this intentional undervaluation of real estate to emphasize the gross injustice of taxing the poor widow's mortgage or bond to the full amount of her honest declaration. And yet there is a rational ground for the sixty per cent. valuation—that by decreasing the amount of the tax valuation, with a consequent increasing of the tax rate, there will result a tendency to check extravagant appropriations and squandering of the public funds. But whatever the basis of the assessment it should be uniform. The real difficulty, however, is to obtain an equal assessment of all property on any accepted basis, of real estate as well as of other forms of property. Yet the taxation of real estate is demanded on political, economic, and ethical grounds.

¹ In the decennial appraisement of Ohio in 1900 the railroad property in many counties was assessed at about 12 per cent. of its value. Notably was this so in Cuyahoga county (Cleveland). This condition was made possible by a vicious system of appraisement (by county auditors) which lent itself to a system of indirect bribery through the grant of railroad passes to the assessors—the auditors.

² Such was the fact in the appraisement of real estate in Cleveland in 1900, as the writer was reliably informed by a real estate owner who made personal inquiries of the different assessors. It was within the personal knowledge of the same authority that in the assessment of 1890 large owners of real estate got low assessments by bribing the assessors through a third party.

What, then, is the solution of the problem—*i. e.*, of uniform and honest assessments? The remedy lies very largely with the taxpayers themselves. For first and foremost is the necessity of honest and efficient assessors,¹ without which any system of taxation may be made to work injustice, while with them any systems in themselves defective may be made to realize substantial justice.² But while very much depends upon the character of the assessors, the methods of assessment are also of much importance. For however honest and intelligent the assessors, there can be only a chance equality of assessment, unless there is some common basis for the determination of values and some common agreement for the percentage of valuation. What method will best accomplish the desired result we cannot stop to discuss. We may note, however, that it lies in the direction of a more centralized control of assessments, the degree of centralization being determined by the character of the property assessed: the taxing area for real estate being the township, county or city; that for railroads and other corporations the state. There should also be fixed and uniform rules for determining values and a rigid enforcement of some fixed percentage of valuation. But so long as the matter rests very largely upon the judgment of individual, local assessors, the pretense of justice becomes a farce. With some such system as suggested, and with intelligent and honest assessors, a fair approximation of justice may be attained. But the methods of assessment are closely allied with a system of taxation, to which let us next turn our attention.

¹ See last note.

² Cf. Report of Professor Bolles in *Report of Pennsylvania Revenue Commission of 1887*, p. 157.

II. THE TRUE TAX SYSTEM

In the preceding discussion it has been pointed out that a just system of assessment involves a direct assessment by the taxing authorities, a consequent wise selection of the kinds of properties to be taxed, and methods of assessment that shall reach all assessable property equally. Without stopping to discuss these methods in any detail it was indicated that they should be such as to eliminate, as far as possible, any personal factor within the same taxing political unit—eliminate, that is, the individual judgments of different assessors as well as the personal declarations of the assessed; thus diminishing, on the one hand, bribery and corruption, and, on the other hand, deception and perjury. It was also pointed out that in the choice of taxable property three things must be considered: The indicativeness of the property as a measure of income—the ultimate source of all taxes; and the readiness with which the taxed property lends itself to equitable assessment; and finally, that this readiness, or equality of assessment (and, we may add, of taxation), depends very largely upon the tax system; or, in other words, upon the kind of taxes and the methods of taxation, and the distribution of the different taxes among the different political taxing units.

With, then, a wise system of taxation—a proper choice of subjects and methods, and a proper distribution—it is believed that much would be accomplished in the way of removing the glaring absurdities and inequalities of present methods, and for the practical introduction of the principle of “equality of burden” as based upon “ability,” so far, at least, as ability is measured by income. A brief consideration of such a system, which we must confine to the barest outline, will supplement our remarks upon assessment, and at the same time point out what we believe to be a rational system of taxation that will at once realize substantial jus-

tice in taxation and come within the realm of the practicable—essentially conform to the ideals of justice and to the requirements of practical application. Let us consider, then, the outline of such a system.

1. *Subjects and Methods of Taxation.* We have already indicated the principles that should determine the choice of subjects—*i. e.*, of property—for taxation, and also the relation which this choice bears to equitable assessments, which will appear further as we proceed. Our present purpose is to give an outline of the more important subjects for taxation that will realize the requirements of these principles. No attempt will be made to weigh the pros and contras of different kinds of taxes. Our aim shall be positive and constructive, rather than negative and by elimination. Yet we may again emphasize the fact that no rational system of taxation can contain a “general property tax” which treats alike taxes on real estate, on tangible, and on intangible property. Nor is it necessary to add to what has already been said in justification of this conviction. We shall, therefore, assume the abandonment of the “general property tax,” as such, in compliance with the logic of experience and the all but universal opinion of expert testimony.¹ This, however, does not imply that some forms of property are to escape taxation altogether. On the contrary, so far as they are proper subjects for taxation they will be taxed equally (at least more equally), and will be taxed in fact and not merely in name, but under a different name and by different methods than those now in vogue.

The system of taxes which we have in mind may, perhaps, best be outlined by a consideration of taxes on consumption, on real estate, on personal property (tangible only), on mortgages, on corporations and on inheritances; though special assessments, fees and fines should have their place

¹ As Dunbar, Taussig, Seligman, Adams and Ely.

in the system. These, however, have for their purpose local improvements, special benefits, or penalties and must, therefore, be passed over in a scheme for general taxation based upon ability.¹

(1) *Taxes on Consumption.* If it were true that all incomes are spent in personal satisfactions and enjoyments there would be much to be said for the contention of Sir William Petty: that "a man is actually and truly rich according to what he eateth, drinketh, weareth, or in any other way really and actually enjoyeth;" and that, therefore, "every man ought to contribute according to what he taketh to himself, and actually enjoyeth."² But such a condition of things would be true only under the circumstance that the total income was spent in this manner, a circumstance that, as a rule, would happen only with moderate incomes. Indeed, with the enormous development of savings banks and other means for making small investments—stocks, bonds, etc.—it does not apply universally to even moderate incomes. And yet with moderate incomes (especially with the more moderate incomes) expenditure is a very fair index of income, and a tax on expenditure a very fair approximation to justice. But such a tax would reach only a fragment of the larger incomes, and hence is objectionable as a single tax; and, besides, has the further objection that there are many technical difficulties in the way of its execution, so far as there should be an attempt to reach every possible form of consumption.

But while there should be other forms of taxes to reach the parts of income that do not find their way to personal "enjoyments," a tax on consumption is a legitimate and

¹ For a full report of these sources of revenue see Seligman, *Essays*, ch. ix. For criticism of Prof. Seligman's "special assessments" and "fees," see Bastable, *Public Finance*, pp. 153-6.

² Petty, *A Treatise of Taxes and Contributions*, p. 83.

necessary part of every tax system that seeks to reach income by the indirect method, since in all cases consumption does afford some index of income; in many cases a fairly perfect index. But such a tax should be applied indirectly, as by customs duties, taxes on manufactures and corporations, and taxes on real estate—lands and houses—not only to realize economy in assessments and collections and the Smithian canon of “convenience” in time of payment; but also to avoid any possible antagonisms that might arise on account of the strong popular sentiment against personal inquisitions on the part of the government, as a violation of individual liberties. Such a tax, too, lends itself very fittingly to the higher taxation of larger incomes by means of heavy taxes on articles of luxury. To carry out this purpose, however, would require the non-taxation of articles of necessity with a constantly increasing rate for articles of decreasing necessity. But it must be admitted that no such scientific system is possible with protective tariffs.

But though it may not be possible to realize the ideal system of consumptive taxes, they should form an essential feature in any tax system; not only for the reasons given above, but also for political reasons. For though a direct tax is important as tending to stimulate an active interest in the government, and to check extravagance in expenditures, an attempt to raise all public revenue from direct taxation would result in social revolution, or a niggardliness that would effectively cripple the government in the performance of its functions. For, however much we may philosophize about taxes, there is much truth in the statement made by Mr. Buck, of Kentucky, in the early debates in Congress on the subject of taxation: That “taxes are always disagreeable, and it is with reluctance that people consented to pay any, except they saw advantage arising from the payment of them greater than to counterbalance the evil of pay-

ing.”¹ Hence the importance of supplementing direct taxes with indirect taxes, particularly in the taxing system of a national government. It is not less true that the indirect tax should be supplemented by direct taxes; in part to offset the uncertainty of the incidence of indirect taxes, in part because of their greater certainty and economy, and in part because of their direct relation to the government. Most important among these are property taxes and taxes on inheritances. We omit the income tax because of its admitted impracticability. Let us briefly consider the property and inheritance taxes viewed as essential parts of a good tax system.

(2) *Taxation of Real Estate.* The taxation of real estate is theoretically simple enough. It is one of the oldest, as well as the most universal, of all taxes. Indeed, the fact that real estate is a source of income, cannot be hidden from the assessor, and has an immediate relation to and dependence upon the expenditures of government, makes it a peculiarly fitting subject for taxation. And yet, as we have seen, under present systems there is no guaranty of an equality of assessments and of burdens, either between individuals or between different political units. Nor, for the former inequality, is there any effective remedy other than the adoption of a uniform basis for assessments, a larger use of official records—deeds, bequests, mortgages, etc.—and the choice of men of character and intelligence for assessors; while the remedy for the latter inequality—that between different political units—is to be found very largely in an entire rearrangement and readjustment of the tax system, on the basis of greater fiscal independence of the different political divisions within the same system of government—a question which will come up for consideration later.

Upon the justice of levying upon real estate for purposes

¹ *Annals of Congress*, 4th Cong., 2d Sess., p. 1862. Cf. also speech of Mr. Richardson, of Tennessee, 14th Cong., 1st Sess., p. 84.

of public revenue there is no difference of opinion. It conforms to the ideal of taxation according to ability, since the value of real estate is determined very largely by its income-producing power, if we omit the exceptional cases of the speculative holding of land. With this exception, it is in the main true that land, buildings and machinery, and dwelling houses have their value fairly represented in the capitalized amount of the income derived from them. Hence, omitting as we do in the present discussion the question of progressive and differential rates, a tax based upon the valuation of such forms of property is a fair approximation of a tax based upon the derived income, and so likewise a fair approximation of justice. That such taxes may and do become, in part at least, taxes upon consumption does not lessen their effectiveness or their justice. With a rational and stable system of taxation, the burden will adjust itself fairly in the long run. To this end, however, it is important that other forms of property should be reached.

(3) *Taxation of Personal Property.* A sound and just system of taxation must include taxes whose ultimate incidence shall bear upon productive personalty, as well as those that bear upon productive realty. To reach personal incomes it may be necessary, also, to tax some forms of unproductive personalty; unproductive, that is, to the consumer in the sense that Adam Smith used the term. Indeed, such taxes are taxes upon consumption, which have already been sufficiently considered. Yet we may perhaps add, that to us there is some question whether household goods should not be exempted from taxation; not only because they are at best but very roughly indicative of income, but because such a tax must always be upon but a nominal part of the total amount, and that, too, in very unequal portions; must, that is, so long as public sentiment remains as it is concerning the sacredness and privacy of the home.

Moreover, there is little of a scientific character in a system of taxation that places unproductive personalty, which is only roughly indicative of income, upon exactly the same basis as productive property.

On the other hand, such forms of tangible personalty as farming implements and live stock may well be included in the tax system, not only as indicative of income but as also productive of income; while they are at the same time easily assessable; in fact, for the reasons just given, tangible personalty in general should be included in any well rounded system of taxation, and taxed in the same direct manner as realty. The same cannot be said of intangible personalty. As already sufficiently shown, every attempt of this nature leads to the grossest inequalities (to say nothing of perjuries), while its enforcement is a practical impossibility; this impossibility, indeed, being the occasion of the inequalities. Some other method than the direct one must, therefore, be found for reaching the income that has its source in this form of property; or, rather in the forms of property that stand back of and are represented by the intangible forms—mortgages, stocks, bonds, etc. Such a method, and indeed the only practicable method, is to be found in the taxation of this class of income at its source. In this way alone can evasion be avoided and the burden equitably distributed. As the form of property under consideration is most largely represented by mortgages and by stocks and bonds, we may consider briefly the best method of taxing these at their source, which will indicate the true method of taxing the income from all forms of intangible personal property.

(4) *Taxation of Mortgages.* The proper method of taxing mortgages has, perhaps, been sufficiently indicated in our discussion of methods of assessment. Either the real estate, which is represented by the mortgage and is the source of its income, should alone be taxed, leaving mort-

gagor and mortgagee to make the proper adjustment of interest; or, if the mortgage is taxed, the tax should be based upon a compulsory court record, similar to the recording of deeds. At the same time, the amount of the mortgage should be deducted from the value of the real estate that is back of it, according to some such methods as those in vogue in Massachusetts and California.¹ There is but one source of income, and therefore but one source of ability. Hence, to tax both the land and the mortgage is to inflict the patent injustice of a double taxation on that part of the income from land that goes to pay the interest of the mortgage. The better method would seem to be to tax the land and exempt the mortgage, since the land is the direct source of the tax-paying power. Certain it is, at any rate, that the present methods of taxing mortgages are open to so many possibilities of evasion that only the most flagrant inequalities can result, the amount of the mortgages taxed being directly proportional to the sensitiveness of the consciences of the mortgage holders.

(5) *Taxation of Corporations.* A still more important form of intangible personalty is to be found in corporate stocks and bonds, whose income-producing power is to be found in the corporation. In fact, the net earnings of corporations are, in the main, distributed to the holders of these stocks and bonds. If, then, we levy a tax upon the net earnings of a corporation, we thereby impose a tax upon the incomes of its stocks and bonds at their source. The ease with which the imposition of such a tax may be effected, and the unquestioned impossibility of reaching this class of income by the direct method, make the method of taxing at the source the only rational and scientific method of taxing income of this character.

¹ See *Report of Massachusetts Tax Commission*, 1897, p. 7, and Plehn, *The General Property Tax in California* (Economic Studies of Am. Econ. Ass.), pp. 126-7 and 148.

The principle of taxing incomes at their source is now very generally recognized by economists to be the only sound principle of public finance. This is done in the case of real estate, and it is believed that the same principle should be applied in the taxation of intangible personalty. Not only is this the most practicable and most effective method, but it is the most economic, entails the least inconveniences, and is the most equitable in its results. By eliminating the intangible forms of property and the personal equation in assessments, evasions would become practically impossible; while by reaching the whole income there is secured a uniformity in the distribution of the tax burden. And since such a tax necessarily bears upon individual incomes, it meets the ethical requirement of the imposition of a tax upon the source of ability.

Granted, then, the principle of taxing the incomes from stocks and bonds at their source, and that individual tax ability—so far as conditioned by such holdings—is reflected in the corporate ability—*i. e.*, in the corporate net income—the question arises: How, or in what manner, may this corporate ability be most effectively and most efficiently reached? Our answer to this question must be very brief, and somewhat dogmatic. The problem of the taxation of corporations is too large and too complex to be treated with any fulness in the closing chapter of a treatise on the principles of justice in taxation.¹

Thirteen different methods are given by Professor Seligman for taxing corporations.² These are reduced to three by Professor Adams: as based upon property, upon the volume of business, or upon earnings.³ Both, however,

¹ For a thorough treatment of the subject see Seligman, "Taxation of Corporations," *Essays*, ch. 6, 7 and 8. For an excellent brief statement see H. C. Adams, *Public Finance*, pp. 446-466.

² Seligman, *op. cit.*, pp. 177-9.

³ Adams, *op. cit.*, p. 454.

agree that the true measure of corporate ability is to be found in the net income of the corporation; and it must be evident that there can be no other standard. The limitation made by Professor Adams in the case of railroads: that the tax should be based upon the net "income from operation," is important only in calling attention to the fact that double taxation should be avoided in the case of leased corporations.¹ Undoubtedly, if the leased corporation is taxed, the basis of a corporation tax should be the "earnings from operation;" but if only the operating companies are taxed, the basis of the tax should be based upon the total net income. In any case the taxable net income should include the gross earnings, minus operating expenses; but not deducting the outlay for interest, rent, taxes, or improvements.²

Accepting, then, corporate net income—not the net income to stockholders and bondholders—as the true basis of corporation taxes, it does not follow that the desired end can be reached best, in all cases, by imposing the tax directly upon the net income. Whether or not this is the best method must depend upon the practical possibility of uniform and fixed rules of accounting. But according to Professor Adams,³ such a system of accounting is practicable. We may, therefore, accept the net income basis as, upon the whole, affording both the best theoretical and best practical basis for corporate taxation. But if in any particular case such a method is not practicable, we must agree with Professor Seligman that a tax based upon the market value of stocks and bonds will most nearly realize the ends of justice, being, besides, "certain and simple of enforcement."⁴ It is only, or chiefly, because the market values of stocks and bonds are not always determined by their net

¹ Adams, *ibid.*, pp. 460-1. Cf. Seligman, *Essays*, p. 199.

² Cf. *ibid.*, p. 461.

³ *Ibid.*

⁴ *Essays*, p. 212.

incomes, that this method of taxing corporations is not always the most just, as it is the most simple.

The correct determination of the basis of assessment, however, is by no means the least difficult problem in the taxation of corporations. There would, indeed, be little difficulty if the tax were aimed at the corporation *per se*, or if stockholders and bondholders lived wholly within the tax area of the corporation. But from our present view-point, the subject of the tax is not the corporation, but its individual stockholders and bondholders; who, moreover, are scattered throughout various areas of taxation. Yet theoretically, at least, the problem is easy of solution. For all that is necessary is that there should be, among the different commonwealths concerned, a uniformity in the methods of taxation, based upon a common agreement respecting the taxation of resident holders of stocks and bonds of foreign corporations, and of foreign holders of the stocks and bonds of domestic corporations.

The only ethical or logical basis for such agreement is, that each commonwealth should tax only such portion of the net profits as are earned within its borders; this portion being determined, for practical reasons, on the basis of mileage, gross earnings, amount of business, or capital within the commonwealth, according to the nature of the industry. In other words, the net income taxed within a given commonwealth should bear the same proportion to the total net income that the mileage, gross earnings, etc., within the commonwealth bears to the total mileage, or gross earnings, etc. The assumption here is, that the net income within any area is proportional to the mileage, earnings, business or capital within the same area; and if the choice of these methods is wisely made, according to the character of the corporation, substantial justice will be attained, though only if there is uniformity throughout all of the commonwealths.

Such, in brief, is the ideal of corporate taxation, as a means of reaching the individual abilities of stockholders and bondholders. Practical obstacles in the way of state constitutions, and the uncertainties of "politics," do not, however, promise a speedy realization. Nor does this doubt grow less when we contemplate the fact that not one of the American States has ever adopted the recommendations of its various expert Tax Commissions. Nevertheless, the practice in some of the states is evidence of a tendency in the right direction.¹ But for some time, at least, we shall have to put up with the injustice of double taxation; an injustice that is, perhaps, very largely nullified in the fact of extensive evasions under present methods of taxing stocks and bonds.

(6) *Taxation of Inheritances.* Concerning the inheritance tax we may be very brief. It is now very generally justified and very generally adopted. We may consider it from two points of view: That of the decedent and that of the heir. Viewed with respect to the ability of the former, a tax upon the inheritance must find its justification in the assumption that past taxes have been evaded, but have held a permanent lien upon the property. While there is much ground for this theory,² it applies only to personal property, and even then is but the crudest approximation to justice, since the amount of the evasion is an incalculable quantity.³

The more correct point of view, however, is undoubtedly that of the heir, or legatee. And from this viewpoint the justice of the tax is to be found in the increased ability arising from the inheritance, or legacy. According to both

¹ For examples and a fuller discussion of the interstate taxation of corporations, see Seligman, *Essays*, pp. 223-254.

² A lady in New York, the sole heir to her father's estate, told the writer that her father never paid a personal property tax, though at the time of his death he held stock in ten different banks.

³ Cf. Seligman, *Essays*, p. 131.

Professor Seligman and Doctor West, this ability arises from the fact that the inheritance should be regarded as an "accidental income"—measuring ability like other incomes—and the tax as an "accidental income" tax.⁴ This is no doubt the true attitude to take in the case of small inheritances that are spent in the manner of regular incomes. But to us the argument is not so evident with respect to the inheritance of productive property, from which there is the enjoyment of only the annual income. From the viewpoint of income, the ability of the heir is increased, practically at least, only by the amount of the increase of his annual income; and, theoretically, this increased ability should be reached by progressive rates, if not also with differential rates on account of the source. Certainly, from the viewpoint of the government, there has been no increase of social ability, because no increase of social income; but only a transference from decedent to heir.

True, there is a sense in which the whole inheritance may be regarded as a gratuitous and "accidental" income, therefore increasing by its full amount the ability of the heir. If this is the correct view, then, logically and justly, this income should be treated like other incomes of the same class. If this is the only basis and justification of the tax, there should be the same principle of rates that is applied to other incomes, no allowance being made for degrees of relationship. But this is seldom advocated in theory, and is nowhere applied in practice. If, indeed, this theory be true, then are the existing arbitrary rates and distinctions of relationship both illogical and unjust. The fact that they are both justified and practiced is evidence that the "accidental income" theory is, at least, not the only consideration in the inheritance tax. The theory at least assumes that the true tax principle should here be deviated from on grounds of policy or

⁴ Seligman, *Essays*, p. 132, and West, *The Inheritance Tax*, p. 118.

sentiment. Whatever truth, therefore, there may be in this theory of the inheritance tax, it is not a theory that permits of logical application in practice. It needs, too, to be supplemented by other considerations.

We shall not attempt, however, to discuss the various theories of the inheritance tax—cost of service, value of service, co-heirship, escheat, etc. All of them, as Dr. West says, contain some element of truth, and therefore to that extent afford some justification for the tax. Not only is this tax justified on theoretical grounds, but it has also the practical merit of being difficult to evade, and of occasioning little disturbance of industry; besides being less oppressive and less reluctantly paid than most other taxes. Viewed in all of its aspects it forms a necessary adjunct to any scientific system of taxation. We cannot, indeed, quite agree with the implication in the statement of Dr. West that "no tax is better adapted to replace the antiquated personal property tax,"¹ since this implies substitution. The true substitute for these *antiquated* taxes lies, as we have seen, in the direction of a tax on corporations, though the inheritance tax (on personal property) may well be used as supplementary to the corporation taxes.

In the above outline of a system of taxation no attempt has been made to exhaust every legitimate source of public revenue, but only to indicate the main features of a scientific system that will most nearly conform to the theoretical principles of justice—a tax based upon ability, so far as this ability is measured by income. We have omitted a discussion of rates, because, as we have said, we believe that under the prevailing sentiment on this subject this is not, in this country at least, a practical question, though without the progressive rates the highest ideals of justice in taxation must remain unattainable. Of the principle of exemptions

¹ West, *op. cit.*, p. 132.

we need only to say that it is fairly well realized in practice, though, as previously pointed out, we believe that there should be further extensions of the principle, at least in some cases, in order to correspond to the progressively higher standards of living. There is, however, another question of great practical importance, which, because of its immediate bearing upon the execution of such a system as that outlined above, is, indeed, an essential requisite to such a system, and therefore should constitute a vital part of it. I refer to the separation of state and local taxes, which let us in conclusion briefly consider.

2. *State and Local Taxation.* The importance of the separation of national, state, and local taxation is another of those financial questions upon which there is now very general agreement.¹ This granted, the question arises: On what basis should the distribution of taxes be made? According to Professor Bastable it cannot be made on the ground of a difference of governmental duties, since there is no correlation between these duties and tax systems. Hence the distribution must be made on financial and economic grounds.² This is, no doubt, in part true. But in this country, at least, it should be modified by the more correct view of Professor Adams: That "a government should select for purposes of taxation those industries with which it holds some fundamental or constitutional relations."³ In other words, while financial and economic conditions are important factors in determining the political distribution of taxes, the governmental relation to the industry taxed is, perhaps, of prime consideration. Indeed, it is this relation that very largely determines the financial conditions. The principle may be best illustrated by calling attention to the

¹ For a very good treatment of this question see Adams, *Public Finance*, ch. 7. Cf. also Bastable, *Public Finance*, iii, 6.

² Bastable, *op. cit.*, pp. 367-8.

³ Adams, *op. cit.*, p. 493.

more important taxes that should be assigned to national, State and local revenue.

(1) *National Taxes.* The revenue system of our national government is so thoroughly established that there could be only a speculative interest in a discussion of possible reforms. At the very outset the policy was adopted of relying solely upon indirect taxes, leaving all direct taxes for the States. At first it was thought that sufficient revenue could be obtained from customs duties, but it was very soon learned that they would be inadequate, and so excise duties were added. Only twice have direct taxes been resorted to, and with the exception of war periods customs and excises (on spirits, malt liquors and tobacco) have been, and promise long to remain, the chief source of national revenue. Nor is this without much reason. For, as Professor Adams shows, not only do they meet his requirement in the governmental selection of taxes, but they also give realization to the important fiscal principle of *permanence* of government revenue. To realize the other important principle—that of *elasticity*—Professor Adams would have a national tax on interstate commerce. However desirable such a tax may be, there would seem to be little chance of its adoption in the near future.

The national system of indirect taxes is not without other important merits. For, however desirable it may be, from a theoretical point of view, that the citizen should pay a direct tax, in order to emphasize his responsibility to the government and make him watchful over expenditures, there can be no doubt, as we have seen, but that a dependency upon a direct tax would greatly cripple the efficiency of the government. Moreover, the rather indirect relation of the citizen to the national government, at least his remoteness from its operations, goes far to justify the indirect tax for national purposes. Again, if we suppose the tax to retain anything of

permanency it will be found, in the long run, fairly to distribute the burden according to ability; so far, at least, as ability is determined by consumption.

(2) *State Taxes.* For the same reason that customs duties and excise taxes were assigned to national revenue—that of the peculiar relations of the industry taxed to the government—there should be assigned to State revenue the taxation of corporations and quasi-public monopolies. Being dependent upon, and under the regulations of, the State governments, there is a peculiar fitness in their taxation for the purposes of State revenue. Such a tax would be difficult to evade, and would have the fiscal importance of being easily and economically collected. At the same time it would meet the requirements of permanence and elasticity. Moreover, under conditions similar to those assumed in the case of customs and excises, there would be a fair distribution of the burden.

To these taxes might also be added the inheritance tax. Certainly, upon the principles set forth above, the inheritance tax does not properly belong to the system of national taxes. So far as the inheritance tax is regarded as a fee for cost or value of service in the transference of property, it belongs more properly to county taxes; but so far as regarded on the principle of escheat, of co-heirship, or of guaranteeing the right of inheritance, it is very properly a State tax. As grounded upon the idea of compensation or of ability, it should be distributed between State and local governments. On the ground of the dependence of the inheritance upon, and its control and protection by, the government, the inheritance tax belongs, again, more properly to the system of State taxes. On fiscal and economic grounds there is also reason for this disposition of the inheritance tax. Upon the whole, the inheritance tax should go into the State revenue, except, perhaps, such portion as might be necessary for the

probate fees, or other expenses incidental to the conveyance. But we fail to see any good reason why this tax should be assigned to any specific purpose, such as State education, as suggested by Professor Adams.¹

With these two sources it is believed that ample revenue would be supplied for all of the necessary expenses of the State governments. As Dr. West says: "The experience of New York with the inheritance tax and the experience of a number of States with corporate taxes show that by these two methods of taxation alone most, if not all of the State governments, could pay all of their expenses, leaving all taxes on property to local political divisions."²

(3) *Local Taxes.* We have left, then, for local taxation, land, houses, manufacturing plants and real estate generally; also tangible personal property and municipal licenses and franchises. Since county expenses are mainly devoted to the improvement of roads and bridges, which add materially to the value of the surrounding lands, it is very fitting that a land tax should constitute the chief source of county revenue. For township purposes there is the tangible personalty and real estate, including the real estate of corporations. While for municipal expenses we have, in addition to the property taxes of townships, municipal licenses and franchises—such as those of street railways, water works, lighting plants, etc. A special justification for this assignment of local taxes is not needed, since it is directly involved in the principles of distribution of national and state taxes. If further justification were needed it might, perhaps, be found in the fact that in local taxation, as distinct from national or state taxation, there is some justification in the application of the benefit principle as a basis of taxation. It may be added, too, that with such a system of local taxes, where each political unit is fiscally inde-

¹ *Op. cit.*, p. 505.

² *Op. cit.*, p. 132.

pendent, there will be an end to the evil of political units shifting their burdens upon each other by undervaluations.

The above outline of what is conceived to be a rational system for the political distribution of taxes, it must be admitted, is not wholly free from arbitrariness. For in spite of the more or less clearly marked political divisions, the parts of our federal system are so intimately connected, and so closely interdependent, that the relationship of the citizen to one of the units involves his relationship to each higher and lower unit in the system. There is, nevertheless, a difference that is substantial enough for forming a legitimate basis for a political division of taxes. If our division is in contradiction with any of our previous principles, it is with that principle which declares that ability is the only true basis of taxation, for the division is apparently very largely based upon the principle of benefits. As to local taxation, it is admitted that there is some validity in the benefit principle. But carefully examined it will be seen that the contradiction is little more than an apparent one.

There can be no doubt but that it is the fundamental thought in taxation that every individual should contribute towards the support of the political units with which he stands in some direct relation, and should contribute according to his ability. That such a result would follow from such a system of taxation as that outlined in the present chapter, taken in connection with its political distribution, we believe that a careful analysis of probable results would make sufficiently clear. But even though it may not give realization to theoretical principles in every particular, it offers so many practical advantages—realizing uniformity and equality, as well as having political, economic and fiscal advantages—that it may well be considered as offering the highest form of the practical ideal; at the same time that it conforms substantially to the theoretical ideal. The effect

of such a system upon the elimination of those personal and political factors that are the source of so much inequality—fraud, corruption, undervaluations, evasions, etc.—would go far to promote the conditions of an ideal equality, the ends of a complete justice.

Finally, there are hopeful signs that such a system is not always to remain a mere fiscal ideal. The abuses and inequalities of present methods are becoming so flagrant that political parties are being forced to take cognizance of them and to consider remedies for the solution of the evil.¹ normal schools in the United States and other countries.

The second group hold that the most effective results are Nevertheless, the ideal is far from attainment. This is made inevitable on account of the great number of our states, their varied economic conditions, and the natural conservatism of political parties. But until some such system as that outlined in the present chapter is put into practice, we can hope for only makeshift reforms. With such a system once in operation we shall, at least, have taken a long step toward realizing the ideal ends of justice in taxation, and shall have attained a close approximation to justice, which is all that can be hoped for in human affairs.

¹ In the State campaign in Ohio, in the fall of 1901, Mr. Tom L. Johnson, in behalf of the Democratic party, made the issue upon the equalization of taxes. The present writer took occasion to write a letter for a Cleveland paper, briefly advocating the system set forth in this chapter. In reply, letters were received from the leader of the Republican party and from Mr. Johnson, while a Democratic candidate for the legislature made a public reply. In every case it was contended that the system advocated in my letter was essentially the same as that for which they stood committed. In the next legislature the Democratic party did attempt to carry out some tax reforms along these lines, but their efforts were negated by the Republican majority.

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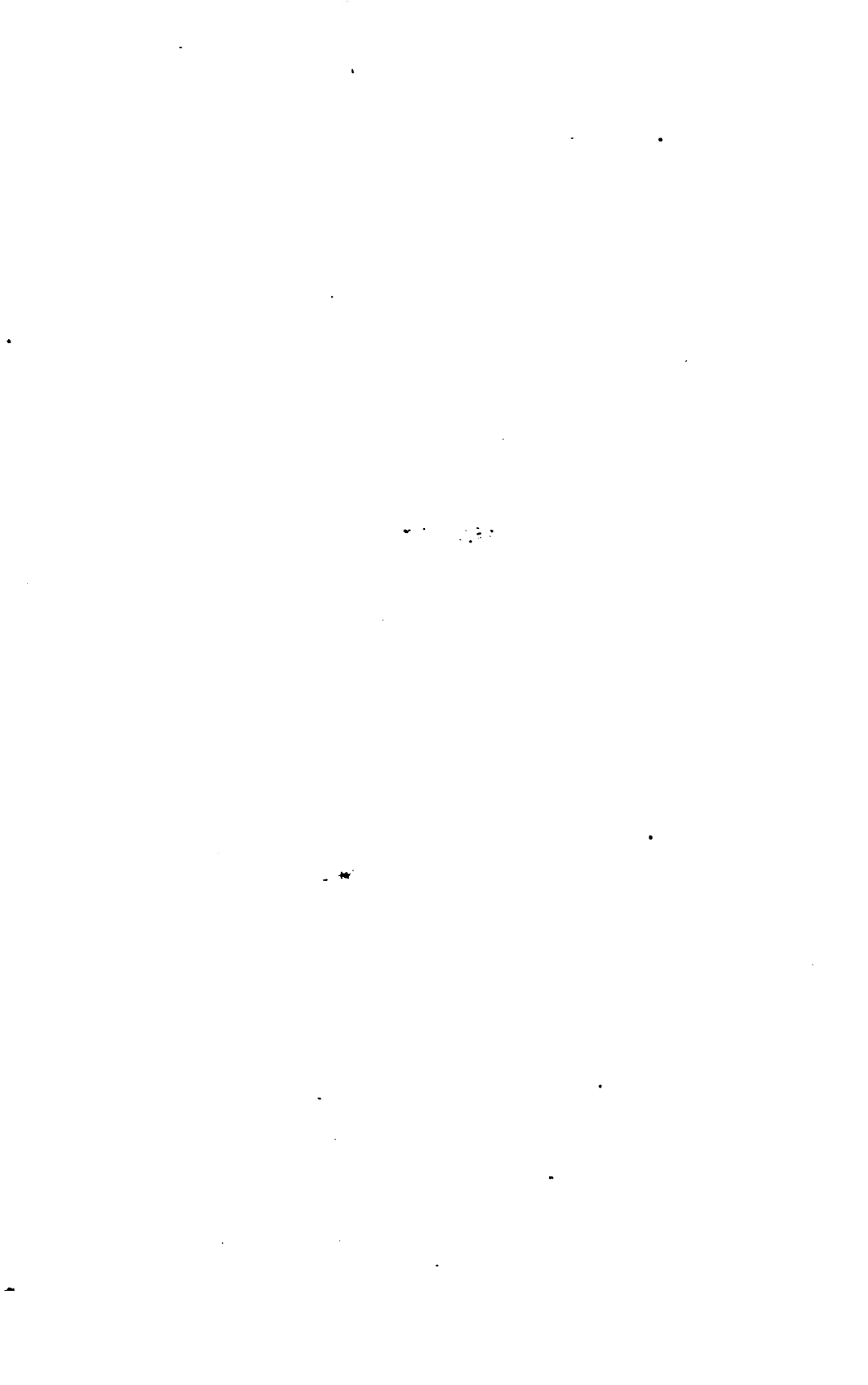
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